REPORT OF THE CIVIL JUSTICE REFORM ACT

ADVISORY GROUP

OF THE

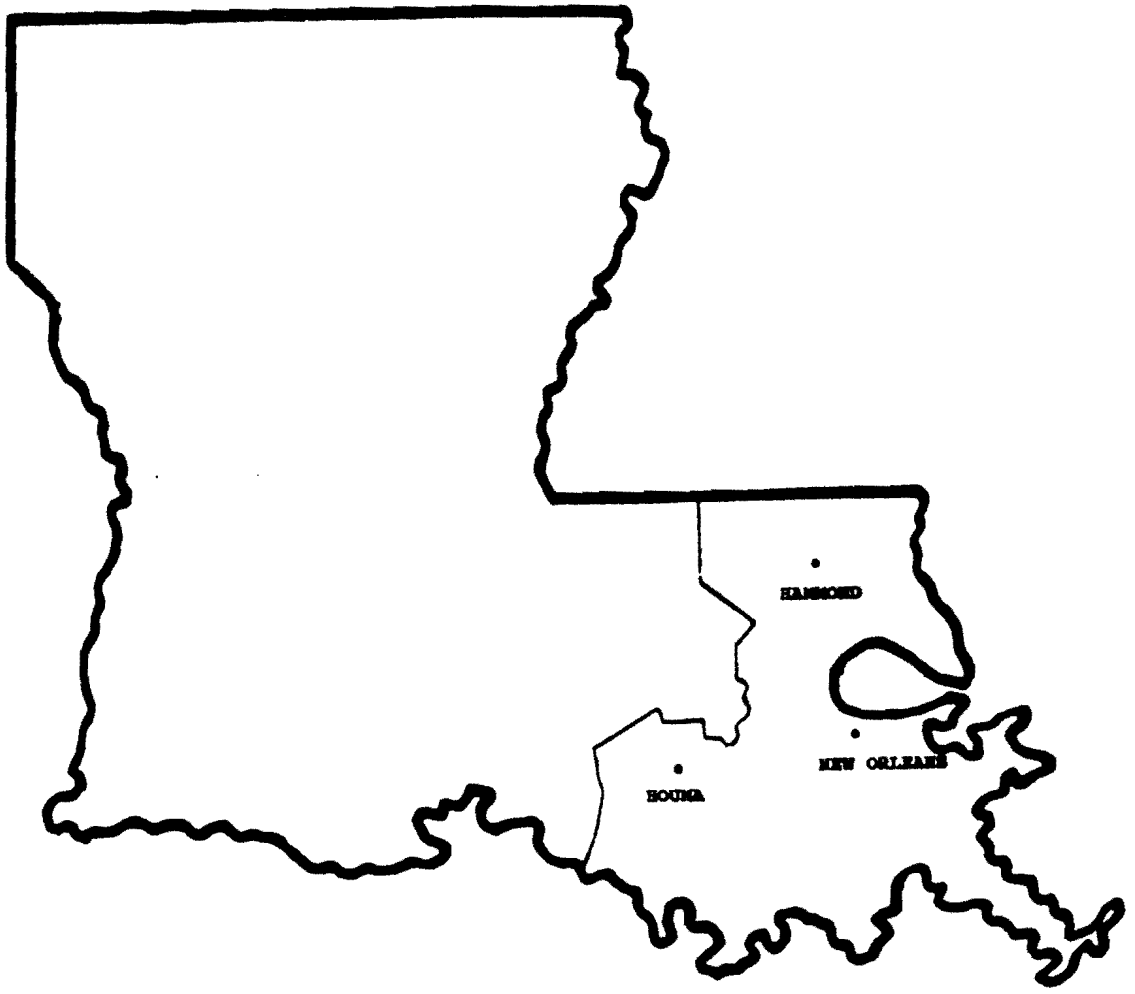
UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF LOUISIANA

JANUARY 25, 1993

EASTERN DISTRICT OF LOUISIANA

(Assumption, Jefferson, Lafourche,
Orleans, Plaquemines, Saint Bernard,
Saint Charles, Saint James,
Saint John the Baptist, Saint Tammany,
Tangipahoa, Terrebonne, and Washington Parishes)



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A. INTRODUCTION

The Civil Justice Reform Act of 1990, Pub. L. 101-650, 28 U.S.C. §471 et seq. (hereinafter "CJRA"), requires each United States District Court to develop a civil justice expense and delay reduction plan. The purpose of each plan is "to facilitate deliberate adjudication of civil cases on the merits, monitor discovery, improve litigation management, and ensure just, speedy, and inexpensive resolutions of civil disputes." 28 U.S.C. §471.

As an initial step toward development of court plans, each district court was required to appoint a CJRA Advisory Group to make recommendations prior to the court's adoption of its expense and delay reduction plan. 28 U.S.C. §472(a). The Advisory Group must "submit to the court a report which shall be made available to the public." 28 U.S.C. §472(b). The report must include an assessment of the court's civil and criminal dockets; the basis for the Group's recommendation either to develop a new plan or to select a model plan; recommended measures, rules, and programs; and a discussion of the principles and guidelines of litigation management and expense and delay reduction set forth in CJRA. 28 U.S.C. §472(c)(1).

In February 1991, then Chief Judge Frederick J.R. Heebe of the United States District Court for the Eastern District of Louisiana appointed an Advisory Group of a chairman, 10 members, two ex-officio members and a reporter. See Appendix A. Present Chief Judge Morey L. Sear initially acted as liaison between the Advisory Group and the Court, facilitating the work of the Group,

and he continued in that function upon becoming Chief Judge in August 1992.

The Group extensively discussed and reviewed the policies and directives of CJRA; condition of the District's dockets; court statistics; whether excessive expense and delay in civil litigation are in fact problems in the District; various geographic, economic, and existing case management features of the District; and the operating procedures the Advisory Group would follow to make its study and draft its report and recommendations. Various written interim reports and memoranda concerning operating procedures and initial findings were prepared and circulated by the Group's chairman, reporter, and the expert consultant it retained to supervise and interpret available court statistics and a questionnaire survey of lawyers and litigants. The Group also interviewed the Districts' judicial officers, reviewed in detail their existing case management procedures, and studied the docket sheets of a representative sample of recently terminated civil cases. A full description of the Advisory Group's operating procedures is attached as Appendix B.

At its meetings prior to submitting this report, the Advisory Group discussed and agreed upon its major findings and recommendations pertaining to the Court's efforts to reduce cost and delay in civil litigation in the Eastern District of Louisiana. Statements throughout this report referring to findings, beliefs, or opinions of the Advisory Group should be interpreted as

representing the views of a majority of members, unless otherwise stated.

B. SUMMARY OF FINDINGS AND RECOMMENDATIONS

It is the unanimous opinion of the Advisory Group that the District does not presently have problems of excessive delay or expense in civil litigation. We attribute this result primarily to the following factors: (1) The Court has for many years employed a largely institutionalized system of techniques of litigation management and cost and delay reduction applying the basic principles and guidelines now set forth in CJRA, 28 U.S.C. §473. (2) Civil case filings in the District have decreased since the mid-1980s, due primarily to the decline of the oilfield service industry and related marine activities which previously spawned large numbers of civil cases. (3) The District's judicial resources are adequate and should be maintained, and the Court has until very recently experienced few periods of extended vacancy in any judicial position.

Despite our finding that the District's present case management procedures already incorporate many of the litigation management techniques endorsed and encouraged by CJRA, the Advisory Group believes that there is room for some improvement. In summary, the principal recommendations of the Advisory Group are that the Court should:

1. Memorialize and incorporate its present case management procedures in a formal expense and delay reduction plan.

2. Set a limit on the number of days decisions on motions and non-jury trials may be held under advisement.

3. Adopt strictly uniform scheduling and pretrial notice orders to eliminate slight variations that presently exist from section to section.

4. Amend the presently used form of preliminary scheduling and case management order to require a short memo by counsel and endorse, adopt, and incorporate the disclosure requirements and deposition limits included in the proposed and soon-to-be effective amended Federal Rules of Civil Procedure 26(a) and 30(a)(2) and 30(d).

5. Permit participation in some conferences with the Court and hearings on nondispositive motions by telephone.

6. Require that the presiding judge personally conduct the final pretrial conference and that a judicial officer preside at an enhanced initial preliminary scheduling conference, and prohibit the practice sometimes used in which deputy clerks of court, law clerks, or other staff conduct such conferences.

7. Maintain the present system of assigning multiple cases for trial on a single trial date or in a single trial week, but identify and assign priority trial status to "bumped" civil cases.

8. Make increased use of what is anticipated to be a growing corps of senior judges.

9. Continue use of various methods of alternative dispute resolution ("ADR") with which various judges in the

District have from time to time experimented but without a court-annexed program that institutionalizes any particular ADR technique at this time.

10. Appoint two small study groups to examine (a) the "tracking" procedure of identifying cases by their complexity and imposing predetermined discovery limits, and (b) a formal court-annexed program for alternative dispute resolution in the District.

The foregoing list is only a summary. Our full recommendations and the basis for them are set forth and explained in greater detail in the body of this report. For the Court's consideration and ease of reference, the Advisory Group attaches to this report as Appendix K a draft of an Expense and Delay Reduction Plan incorporating these recommendations, which the Advisory Group proposes for adoption by the Court.

C. REPORT OF THE ADVISORY GROUP

In an effort to facilitate the Court's review of the Advisory Group's findings and recommendations, the following portion of the Group's report is organized and presented in compliance with the "Recommended Format for Advisory Group Reports" dated August 1991 prepared and circulated to all courts by memorandum from the Judicial Conference of the United States dated September 5, 1991.

I. Description of the Court

(A) Number and location of divisions; number of authorized district judgeships and magistrate judgeships

The Eastern District of Louisiana is centrally located in New Orleans, although court may also be held at Houma. 28 U.S.C.

§98. The Court has 13 authorized district judgeships, six authorized magistrate judgeships, and two bankruptcy judgeships.[1/] At present, the actual sitting judges include nine district judges, six senior district judges, six magistrate judges, and two bankruptcy judges. All of the judges' chambers and courtrooms are presently in New Orleans. Courthouse space has recently been obtained in Houma and is presently being prepared for use beginning later this year. The Court is presently in the process of studying how and under what circumstances cases or court personnel will be assigned to Houma.

The District includes 13 Southeastern Louisiana parishes with a population, according to the 1990 census, of 1,619,759 persons. The District includes not only the highly urbanized areas of New Orleans and its surrounding suburbs, but also smaller cities

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[1/]CJRA does not address bankruptcy litigation or the bankruptcy courts, and its legislative history indicates that Congress intended to exclude the bankruptcy courts from CJRA coverage. S. Rep. No. 101-416 on S. 2648, Aug. 3, 1990, Senate Report at 51. Accordingly, this report does not address the condition of the dockets or the case management practices, if any, employed by the United States Bankruptcy Court for the Eastern District of Louisiana. However, based on a number of unsolicited comments received by the Advisory Group from litigants and attorneys in response to its questionnaire surveys, and considering the experiences and views of Advisory Group members who practice from time to time in the Bankruptcy Court and the substantial increase in bankruptcy filings, the Advisory Group suggests that the Bankruptcy Court, particularly as to its docket of adversary proceedings, would benefit by systematically adopting all or appropriate portions of the proposed Expense and Delay Reduction Plan and devoting a designated portion of its court time to its adversary proceeding docket. The Advisory Group suggests that the Court on its own initiative assign a district judge assisted by a small sub-committee of the Advisory Group working in concert with the Bankruptcy Judges to accomplish that task.

and more isolated rural and coastal regions. The Court's civil docket has historically reflected its geographical makeup. In particular, the area's economic emphasis on marine and energy related industries has had a significant impact on the Court's docket. In the early and mid-1970s and continuing through the early 1980s, the Court experienced a surge in civil case filings which mirrored concomitant growth in the area's maritime and oil and gas based economy. In the late 1970s, the judges of the District were also assigned responsibility for cases filed in the District of the Canal Zone and ultimately for liquidation of the Canal Zone docket pursuant to treaty. Recognizing the sharp growth in the District's case load and responsibilities, Congress in the late 1970s authorized four additional district judgeships for the District, increasing the number from nine to 13.

In the late 1960s and early 1970s, several local district judges, perhaps most notably the late United States District and later Circuit Judge Alvin B. Rubin, became interested in and instituted then-developing techniques of civil case management, including issuance of early scheduling orders, requirements that witness identities be voluntarily disclosed and experts' written reports exchanged, and preparation of extensive pretrial orders controlling the course and scope of trial. The judges of the Court also began the practice of "stacking" cases for trial (i.e. scheduling several civil trials to begin on the same day or on any day during a designated week while recognizing that most, if not all, of civil cases scheduled in this fashion would be settled or

otherwise disposed of prior to trial). These practices were effective in moving the Court's civil docket. By 1980, during the tenure of then Chief Judge Heebe, they had become institutionalized and almost uniformly applied by all judges of the District.

In the mid-1980s, with almost the same rapidity of the earlier surge in the Court's growth, the number of civil filings in the District began to decline. The decrease in civil case filings tracked the decline of the area's oil and gas and marine related economy. Whereas in 1982 civil filings per district judge in the District were substantially higher than the national average, by 1992 civil filings per district judge in the District were about the same as the national average. However, the same effective techniques of case management which had been put in place in the earlier, more intense years of civil filings in the Court, remained in place. In many instances, they have been refined, supplemented on an ad hoc basis, and made further effective in the recent environment of decreased civil case filings in the Eastern District.

(B) CJRA statutory status

The Eastern District of Louisiana is neither a pilot court nor an early implementation district. At the inception of the Advisory Group's work, the Group and members of the Court discussed the option of becoming an early implementation district. Pub. L. 101-650, §103(c). It was specifically decided that the Court would not opt for early implementation status. Its expense

and delay reduction plan, accordingly, must be in place no later than December 1, 1993. Pub. L. 101-650, §103(b)(1).

II. Assessment of Conditions in the District

(A) Condition of the Docket

1. What is the "condition of the civil and criminal dockets" (28 U.S.C. §472(c)(1)(A))?

The condition of the civil and criminal dockets in the Eastern District of Louisiana is excellent. The Advisory Group bases this conclusion on its members' study of available court statistics, the statistical analysis and report of its retained expert, Dr. Renwick (see Appendix H), its questionnaire survey of lawyers and litigants (see Appendix I), its interviews of the Court's judicial officers, and the experience and views of its members.

(a) The Criminal Docket

All phases of criminal cases are handled in a timely manner. There has been a steady but not dramatic increase in the total number of criminal cases but not in criminal cases of any particular type in recent years. When interviewed, the judges of the District generally indicated that their criminal dockets do not impede significantly their civil workload. They unanimously believed that the criminal docket is handled efficiently by the United States Attorney's office.

In 1990, the base statistical year selected by our consultant to coincide with enactment of CJRA, the criminal docket in the Eastern District was characterized by a significantly higher percentage of fraud cases compared to other U.S. courts. The

percentage of its narcotics and marijuana cases was slightly lower when compared to other U.S. courts. The number of criminal cases filed per judgeship in the Eastern District in 1990 was lower than the national average, ranking 84th of the 94 districts in the nation. The time required for disposition of criminal cases has risen slightly, but not significantly, on a percentage basis from 1985 to 1990, and remains substantially below the national median.

The United States Attorney believes that the number of criminal cases will continue to rise in this judicial district as has occurred over the past several years. This anticipated increase is supported by the statistical analysis prepared by the Executive Office for United States Attorneys which reflects a 10.4% increase in criminal cases filed during fiscal year 1991 in comparison to fiscal year 1990. The United States Attorney's Office anticipates that it will maintain its high level of fraud prosecutions in this judicial district; in addition, it is expected that there will be an increase in the number of drug trafficking prosecutions based upon the recent dedication of additional law enforcement resources to this area.

When considering the impact of the criminal docket, the United States Attorney believes that certain priority programs within the Department of Justice also must be taken into account. For example, Operation Triggerlock, which is designed to target violent offenders and enhance the penalties these violators receive, will continue to affect the docket of this Court.

The United States Attorney feels that any increase in the amount of time needed to handle criminal cases or any impact upon the civil docket is due to the high percentage of criminal fraud cases, which typically require an exceptional amount of time to handle discovery, pretrial motions, and trial. The United States Attorney believes that there has not been any delay in the processing of criminal cases due to the condition of the Court's docket.

(b) The Civil Docket

All phases of the civil docket are generally handled in a timely manner. There has been no increase in the total number of civil cases filed; in fact, the trend in recent years has been downward, as discussed below. Similarly, there has been no dramatic surge in any particular type of case which has caused civil docket problems. In recent years, when the judges of our Court have detected particular classes or types of cases whose presence posed distinct difficulties or threats to the efficiency of the civil docket, for example consolidated multi-district litigation cases, asbestosis cases and prisoners' petitions, special dockets, procedures, or Local Rules have been established to handle them effectively. Our survey responses, interviews, statistical studies, docket sheet reviews, and experience all lead the Advisory Group to conclude that the Court's civil docket is in excellent condition.

2. What have been the "trends in case filings and in the demands being placed on court resources" (§472(c)(1)(B))?

While civil case filings in the District have generally declined during the past ten-year period (as discussed below), the Advisory Group observes that the number of civil filings has fluctuated recently from year to year and concludes that the number of civil filings in the District has stabilized. For example, total filings increased from 1988 to 1989. The number declined significantly in 1990 but increased again in 1991, only to decline moderately in 1992. The Advisory Group believes that an anticipated increase in civil filings related to the Americans with Disabilities Act, the Civil Rights Act of 1991, and an improving local economy, coupled with expanded demands on court resources from anticipated additional criminal filings, will result in stable and perhaps increased judicial case loads in the coming years.

As previously noted, the civil docket has declined in terms of case filings. In fact, the decline in civil case filings is a significant trend observable in the District in recent years. Precise identification of causes of this decline is difficult. Possible causes suggested to or by the Group during the course of its work include (1) the decline of the region's energy and related marine based offshore service industry which formerly spawned large numbers of federal jurisdiction cases, including general maritime law, Jones Act and diversity cases; (2) a reluctance of some litigants and segments of the bar to subject themselves to the stringent case management, rules, and scheduling techniques commonly used in the Court if the option of proceeding in the local

state courts is available; and (3) a feeling among some plaintiffs' lawyers that larger and more favorable jury verdicts are generally obtainable in certain state courts when compared to the relatively more conservative jury verdicts rendered in the Eastern District. The Advisory Group notes this trend because it seems unique and anomalous in light of the Congressional findings concerning "the increasing volume" of civil cases that, at least in part, prompted enactment of CJRA. Pub. L. 101-650, §102(6).

As reflected in greater detail in Dr. Renwick's statistical profile (see Appendix H), the civil docket in the Eastern District in base year 1990 was characterized by twice the percentage of tort cases as found in the U.S. as a whole. Substantial numbers of those cases were maritime. The percentages of other categories of civil cases were slightly lower than or equal to those nationwide.

Significantly, although the number of civil filings per judgeship in the Eastern District has declined from 1985 to 1990, the decline has <u>not</u> brought the number of civil filings per judgeship substantially below the national average. While in 1982, civil case filings per judgeship in the Eastern District were substantially higher than the national average, in 1990 that figure in the Eastern District was about the same as (less than 2% below) the national average.

As Dr. Renwick reported, while civil filings of all types have declined, the District "has been gaining ground in disposing of cases." Appendix H, p. 4. The time required to dispose of

civil cases entirely and from joining of issue to trial, together with the number of cases more than three years old, all declined significantly from 1985 to 1990 and are below both the national and Fifth Circuit medians. Based in part on these statistics, the Advisory Group concludes that the Court's existing case management programs, adopted and put in place at a time when case filings and per judge workload were high and enhanced over the years, are effective and largely adequate to deal with the present civil docket in a manner that controls expense and delay within reasonable and satisfactory limits.

3. What have been the trends in court resources (e.g., number of judgeships, vacancies)?

The Court's judicial resources in terms of the number of authorized district judgeships and magistrate judgeships are presently sufficient. The Court's case management performance has been excellent. The Court is an example of how a combination of sound case management techniques, hard work, and adequate judicial resources can work to control expense and delay in civil litigation.

While the number of judgeships in the District is presently sufficient, the Advisory Group is concerned that changing circumstances may threaten the present adequacy of Court resources. As previously noted, the Advisory Group's findings indicate stabilization and coming advances in the local economy and the number of civil filings, coupled with increasing and more complex criminal prosecutions. Many of our judges have recently reached or will soon reach senior status eligibility, a circumstance which has

not been common in the Eastern District, at least until the past 12-18 months. Accordingly, the Court faces (in the coming years) increased periods when judicial vacancies will likely pose difficulties. In addition, this report and the proposed plan (Appendix K) recommend certain increased case management obligations suggested by CJRA on the judicial officers of our District. These additional duties can only be effectively undertaken if judicial resources remain adequate.

As noted above, extended judicial vacancies have not in recent years been a problem in the Eastern District. The district judges have timely and promptly filled open magistrate judgeships. Until the past 18 months, district judgeships have also been promptly filled. Recently, however, primarily due to senior judge eligibility, district judgeship vacancies occurred, and they have gone unfilled. At this writing, there are three (and potentially four[2/]) unfilled vacancies. The Advisory Group strongly urges prompt nomination by the Executive Department and timely confirmation consideration by the Senate for all such vacancies.

As one district judge stated in our interviews, the magistrate judges of the District are the "unsung heroes" of the Court. They handle impressive workloads and play an integral part in many aspects of the Court's present case management scheme and special procedures for particular categories of cases. Their duties will likely increase if the Advisory Group's recommendations, particularly those related to conduct of the

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[2/]Judge Robert F. Collins is suspended but not impeached.

initial preliminary scheduling conference, are implemented. The Advisory Group recommends that the Court examine and evaluate the extent to which the present staff of three pro se law clerks assigned to the Clerk of Court might be made more readily available for use by the magistrate judges to provide research, writing, and administrative assistance.

(B) Cost and Delay

1. Is there excessive cost and delay in civil litigation in this district? What is the supporting evidence for the group's finding?

The Advisory Group specifically finds that there is no general problem of excessive cost and delay in civil litigation in the Eastern District of Louisiana. The evidence supporting this conclusion comes from several sources.

First is the data from our questionnaire survey of general respondents and lawyers and litigants in a 156 case representative sample of recently terminated civil cases contained in Dr. Renwick's report, Appendix I, which the Advisory Group specifically adopts and incorporates into its report. A full explanation of the methodology and detailed results of our survey is included in Dr. Renwick's report, Appendix I,[3/] and will not be repeated here. Among the more significant individual findings, 90%

[3/]Dr. Renwick also prepared and provided to the Advisory Group a 306-page volume of computer printouts representing the raw data on which his reports are based. For reasons of economy, that volume has not been attached to this report. It is available for review, however, in the custody of the Advisory Group's reporter. In addition, the three forms of questionnaire, which were appendices to Dr. Renwick's report, have been deleted from Appendix I, since they are reproduced elsewhere as appendices to this report.

of attorney respondents, 47% of litigant respondents, and 67% of the general questionnaire respondents felt that the time required from filing to disposition of civil cases in the Eastern District was reasonable or about right. Appendix I, p. 3, 14, 33. Only eight percent (8%) of attorney respondents, 45% of litigant respondents[4/] and 11% of respondents to the general questionnaire felt resolution of civil cases took too long. The remaining percentages in each category either did not respond or felt not enough time had been provided to determine their cases. As to the level of costs, including attorneys fees, 69% of attorney respondents, 61% of litigant respondents, and 67% of respondents to the general questionnaire said costs were about right, reasonable, or low. Only 21% of attorney respondents, 39% of litigants, and 33% of general questionnaire respondents felt that expenses were too high. See Appendix I, p. 5, 17, 42.

Dr. Renwick's basic conclusion based on his overall analysis of all responses and data gathered from approximately 300

[4/]The Advisory Group recognizes that this 45% figure -- while representing a minority of responding litigants -- is significant. The Group concludes, however, that it does not support a finding that civil cases take too long in this District. Most other available data, particularly the statistics which show that this District performs far better than most others in terms of timely disposition of its civil cases and the overwhelmingly positive attorney responses to our survey, support a contrary finding. In fact, the District's civil docket moves quickly. Accordingly, the Advisory Group feels that this 45% figure is largely a result of litigant misperception. In the experience of the Group's members, many litigants always perceive that their cases take too long to resolve. In view of the nine-month average from filing to disposition required for the vast majority of civil cases in this District, the Advisory Group believes quicker movement of the docket might well result in insufficient time for full and proper preparation of cases for trial.

questionnaire responses, including responses to survey questions related to specific case management techniques, extent of discovery, motion and trial practice, and specific kinds of costs, as reported in Appendix I, p. 51, states:

"In general, the Eastern District of Louisiana is in very good shape according to the respondents. The amount of time it takes from filing to disposition of cases is reasonable. Case management received high marks from the respondents, and litigation costs were viewed as being about right. Discovery accounted for the largest amount of time and money spent on litigation. To the extent there were problems with time, case management, or costs, discovery was the culprit."

Further support for the Advisory Group's conclusion that excessive cost and delay are not problems in the Eastern District of Louisiana can be found in the results of the independent review by members of the Group of the docket sheets of cases in our representative sample. A full explanation of those findings and the methodology of our docket sheet review will not be repeated here since they are reported in detail in Appendices J and E. Even though "our sample was weighted slightly in favor of cases that took longer to resolve than the mean," the report's basic conclusion states: "The docket sheets indicated that the Court generally adhered to a standardized, usually effective system of case management procedures, which ordinarily resulted in setting of an initial trial date within about one year of filing of the complaint." Appendix J, p. 1, 3.

Review of the docket sheets revealed that in general the Court employs a system which sets a scheduling conference shortly after all answers are filed. A detailed scheduling order is then entered, setting various deadlines for disclosure of information concerning fact and expert witnesses, completion of discovery, drafting of a detailed final pretrial order placing limits on the conduct of trial, and a trial date, ordinarily within six to nine months of the initial scheduling conference.

Additional evidence to support our finding that there is no general problem of excessive cost and delay in civil litigation in this District can be gleaned from our interviews of the Court's judicial officers, from the experiences of the Advisory Group's members, and the statistical comparisons of the Eastern District with other federal districts nationwide, which have previously been mentioned and which appear in Dr. Renwick's statistical analysis attached hereto as Appendix H.

This is not to suggest that the performance of the Court in reducing cost and delay in civil litigation has been perfect. As Dr. Renwick's report on our survey and the Group's docket sheet review reflect, there have been instances in which individual civil cases have been too expensive and taken too long to complete. The Advisory Group finds, however, on the basis of the data and our various evaluation efforts that such cases are the exception rather than the rule. Accordingly, the Advisory Group concludes, particularly in light of the imminent changes in the Federal Rules of Civil Procedure related to voluntary disclosure and deposition

restrictions, which the Advisory Group endorses, that no dramatic alterations in the Court's present case management techniques are required. The recommendations made in this report are made primarily to formalize and preserve the Court's procedures which have proven effective to date in controlling excessive cost and delay, while making certain improvements designed to address the exceptions rather than the rule.

2. If there is a problem with cost and delay, what are its "principal causes" (§472(c)(1)(C))?

To the limited extent which excessive cost and delay are problems in a small minority of cases in the Eastern District, the principal causes appear to be (1) discovery and (2) individual aberrational lapses by lawyers or judges in monitoring or complying with the predominant case management procedures the Court for years has implemented. As Dr. Renwick remarked at the conclusion of his report, "Discovery accounted for the largest amount of time and money spent on litigation. To the extent there were problems with time, case management, or costs, discovery was the culprit. To change the system, the rules of discovery must also be changed." Appendix I, p. 51. As the Advisory Group's report on its docket sheet study indicates, the most frequent reasons for cases taking too long or having high costs were "frequent continuances, the lack of a firm schedule or discovery control imposed by the Court, extensive discovery, and delays in ruling on motions under advisement." Appendix J, p. 2.

Thus, in making its recommendations set forth at pages 28-41 herein, the Advisory Group has sought to address these

particular causes or to anticipate and consider how imminent changes in the Federal Rules of Civil Procedure will affect or address these causes. As to discovery, for example, the Advisory Group finds that the Court's present procedures and Local Rules already require a significant degree of voluntary disclosure of information and limitations on discovery matters, including interrogatories and motions to compel. The Group considered recommending that the Court include in its plan new disclosure requirements and discovery limitations. However, the Group is aware that proposed changes to the Federal Rules, particularly to Rules 26 and 30 concerning voluntary disclosure of information and limits on the number and length of depositions, have already been recommended by the Committee on Federal Rules of the Judicial Conference of the United States, approved by the full Judicial Conference and sent to the United States Supreme Court and Congress for final approval. This Advisory Group endorses those changes and recommends that the Court make provision for them in its plan and its scheduling and case management orders, perhaps in the fashion set forth as an attachment to our proposed plan, Appendix K. However, the Advisory Group reserves the opportunity to reexamine how and whether the disclosure requirements should be included in the Court's plan in the event the amendments do not become effective prior to the effective date of the plan.

As to individual lapses in existing case management procedures, the recommendations made herein seek to minimize their occurrence by finetuning and improving existing procedures.

(a) How are cost and delay in civil litigation affected by the types of cases filed in the district?

The Advisory Group has uncovered no evidence and does not believe on the basis of the experience of its members or its interviews with judicial officers of the Court that cost and delay are affected by the particular types of cases in the District. Undoubtedly, the District's reduced number of civil filings, when combined with sufficient judicial resources and longstanding effective case management systems, account for much of the District's success in limiting excessive cost and delay. As noted above, the predominant characteristic of civil cases filed in the Eastern District is that more are tort cases than generally found nationwide. However, the Advisory Group finds no particular correlation between that statistic and the Court's performance in terms of cost and delay.

(b) What is the impact of court procedures and rules (e.g., case scheduling practices; motion practice; jury utilization; alternative dispute resolution procedures such as arbitration and mediation)?

The Advisory Group finds that adherence to well-established case management procedures has been a primary reason for the Court's success in controlling excessive cost and delay in the District. Its existing scheduling conferences and orders (which are the basis for the slightly revised forms attached to Appendix K, our proposed plan) and its motion submission and ruling practices have been generally effective, as reflected in Appendices I and J. Its present system of jury utilization in conjunction with the practice of setting multiple civil cases for

trial on one trial commencement day or on any day during particular weeks (i.e. "stacking") has worked uncommonly well in expeditiously getting cases to trial or prompting settlements.

The system of setting multiple civil cases for trial on single trial days or on any day during particular weeks is specifically endorsed by the Advisory Group, which recommends that it be continued. However, this "stacking" technique has been the subject of some limited criticism received in our survey responses and in the Advisory Group's discussions, primarily when cases are "bumped" (i.e. continued by the Court because some other case also set for that day has not been settled or dismissed and must proceed to trial in preference to another also set for trial that day). This occurrence obviously results in additional delay and cost for the "bumped" case. The Advisory Group finds that the benefits of this practice in terms of reducing overall cost and delay within the District outweigh the occasional problems experienced by "bumped" cases. The experience of the Advisory Group and its questionnaire respondents is that nothing prompts serious settlement discussions or other efforts to dispose of a civil case short of trial like an impending trial date. Since settlements or dismissals short of trial do in fact occur in an overwhelming majority of civil cases (see e.g. Appendix J, p. 4), multiple setting of civil cases in our District results in the setting of a sufficiently firm trial date to serve the purposes suggested by CJRA at 28 U.S.C. §473(a)(2)(B).

To address and minimize the negative effects of this generally beneficial system on the relative few civil cases that are "bumped" under this system, the Advisory Group has recommended at pages 37-39 a system of identifying and assigning such cases "priority trial status."

The Court at present has no formal, court-annexed ADR program. As previously noted, individual judges have from time to time employed ADR techniques, such as minitrials, summary jury trials, and referral to private mediation in a few cases. In addition, the District's judicial officers themselves invest substantial time and employ mediation techniques in conducting settlement conferences, both for cases on their own dockets and in cooperation with other judicial officers when asked to preside over settlement conferences in cases on the dockets of other judges. The Court generally makes known to lawyers and litigants the availability of its judicial officers for settlement conferences at any time upon request, and in appropriate instances has required or invited participation in such settlement conferences by the parties themselves, not just their counsel. This substantial investment by the Court in settlement efforts has generally proved effective in achieving resolution of civil cases by alternatives other than trial or other formal disposition. The Advisory Group specifically endorses the Court's extensive commitment to conducting settlement conferences upon request.

(c) What is the effect of court resources (numbers of judicial officers; method of using magistrates; court facilities; court staff; automation)?

The overall excellence and sufficiency of the Court's resources in terms of the number of judicial officers, its physical plant, and staffing are keys to its continued success in controlling excessive cost and delay. Our Clerk of Court has been particularly innovative in the use of automation in her office. The Court's use of magistrate judges as provided in Local Rules 19.01E through 19.12E and as ad hoc conductors of settlement and discovery management conferences is a significant ingredient in its success.

In this regard, the Advisory Group makes two suggestions. First, the Advisory Group anticipates that its recommendations, if adopted in the Court's plan, will impose additional case management responsibilities on the magistrate judges, for example in conducting initial preliminary scheduling conferences. Accordingly, as previously mentioned, the Advisory Group suggests that the Court study whether and how the present staff of three pro se law clerks assigned to the Clerk of Court might be made more readily available for use by the magistrate judges for their legal research, writing, and administrative needs.

Second, as previously discussed, the Advisory Group anticipates that increasing periods of vacancy in district judgeships will occur as our present sitting judges become eligible for senior status. Failure by the Executive Branch to make prompt nominations to fill such vacancies or delay by the Senate to act

promptly on confirmation will negatively impact the District's ability to control cost and delay.

(d) How do the practices of litigants and attorneys affect the cost and pace of litigation (e.g., discovery and motion practice; relationships among counsel; role of clients)?

The Advisory Group has uncovered virtually no evidence that any specific practices of litigants or attorneys in the District have any particular effect on the cost or pace of litigation. As a general matter, members of the bar in the District relate well and predictably with their clients and one another in litigation. The rules and procedures of the Court are long established and well known. For example, Local Rule 2.11E requiring accommodation, discussion, and negotiation between counsel prior to submission of a discovery dispute to the Court and Local Rule 2.08E requiring inquiry and certification concerning whether motions of certain types are contested and therefore require hearings seem to have had the desirable effect of promoting cooperation at the bar and minimizing Court involvement in matters that counsel generally can resolve. The predominant practice in most sections of the Court in which motions are decided on the basis of briefs taken under advisement without the necessity of oral argument is generally accepted as an efficient cost-saving procedure which most often results in timely motion ruling.

In short, the Court and its lawyers generally enjoy a good reputation with each other and among litigants, as reflected in part in the responses to our survey questionnaire (Appendix I).

At the suggestion of some judges of the District in discussions with Advisory Group members, the Group has considered and discussed limitations placed on attorney contingency and other fee arrangements in the Expense and Delay Reduction Plan of the Eastern District of Texas, in New Jersey by court rule, and in New York by state statute. The Advisory Group rejects the inclusion of any such limitation in this Court's plan for several reasons.

First, the evidence we have reviewed does not indicate any significant problem or disapproval of present contingency fee arrangements in our District. Second, except where statutory or case law already requires review of attorneys fees in particular cases, including for example where the Court is expected to make an award of such fees to the prevailing party, we deem regulation of such fees to be a legislative or bar association function rather than an appropriate function of the Advisory Group or this Court acting pursuant to CJRA. The Louisiana State Bar Association and this state's supervising courts already have in place procedures for receiving and reviewing complaints or inquiries concerning excessive or unfair fee arrangements. Third, the practice of law is a highly competitive business in the Eastern District of Louisiana. There are plenty of lawyers, in all areas of general practice and specialty, vying for limited work. It is essentially a buyer's market. If a litigant is dissatisfied with a particular fee arrangement proposed by a lawyer he consults, whether that litigant is a defendant or a plaintiff, chances are excellent that

the litigant will be able to locate an equally qualified lawyer willing to negotiate acceptable fee terms. In this environment, the Advisory Group finds it unnecessary for the Court to impose fee limitations in its plan and recommends against it.

(e) To what extent could cost and delay be reduced by a better assessment of the impact of legislation and of actions taken by the executive branch (§472(C)(1)(D))?

The Advisory Group believes it is self-evident that increased federal legislation and Executive Branch action impact the courts, including our own in the Eastern District. Such is the inherent nature of our three-branch system of government. Each branch has its job to do. Almost every legislative and many executive actions will impose additional case load on the federal courts, necessitating some additional cost and delay. Therefore, the Advisory Group believes that requiring the Executive and Legislative Branches to assess the impact of each act of legislation and each executive action on the Judicial Branch, including perhaps provision for additional resources with which to handle resulting work load increases, would be helpful in reducing excessive cost and delay.

III. RECOMMENDATIONS AND THEIR BASIS

(A) State the "recommended measures, rules, and programs" (§472(b)(3)), such as recommended local rules, dispute resolution programs, or other measures, and for each explain how it relates to an identified condition and how it would help the court reduce excessive cost and delay.

The Advisory Group makes the following recommendations:

1. **Formalize Predominant Existing Case Management Procedures**

The Court should memorialize, incorporate, and make uniform its present predominant case management procedures (for example, regular monthly call dockets, an early Rule 16 scheduling and case management conference within 60 days from appearance of a defendant, uniform scheduling orders with disclosure requirements, deadlines and firm trial dates within six to nine months of the initial conference date, Court availability for settlement conferences upon request, and standing pretrial notice concerning pretrial orders) into a formal CJRA Expense and Delay Reduction Plan.[5/] The Court's existing and long established forms of scheduling order and pretrial notice have been used as the basis, with slight revisions noted below, of the attachments to our

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[5/]The Advisory Group is aware of criticism by some that district expense and delay reduction plans which "opt for traditional remedies" for cost and delay or endorse "the way things are"..."depart from the theory, requirements, and exhortations of the CJRA." See e.g. M. Misuraca, The Civil Justice Reform Act of 1990: Early Returns (reviewing the early implementation plans of the Southern District of New York, Eastern District of Pennsylvania, and Northern District of California), ALI-ABA Resource Materials, Civil Practice and Litigation in Federal and State Courts (5th ed. 1992). Obviously, this Advisory Group rejects such criticism insofar as it may be leveled at the Eastern District of Louisiana, since our primary recommendation is that the Court include most of its existing case management techniques in its CJRA plan. We are motivated to make this recommendation not by a desire to cling to the familiar but because we sincerely believe and have concluded based on lengthy study that this Court's case management procedures and work ethic have in fact been effective in minimizing cost and delay in this District, which has long applied many of the techniques and suggestions incorporated in CJRA. We can only conclude that perhaps the longstanding status quo in the Eastern District of Louisiana is closer to the "theory, requirements, and exhortations of the CJRA" than the status quo of other districts, whose CJRA reports and plans have been subjected to such criticism.

proposed plan (Appendix K). In addition, the Court's Local Rules should be maintained.

This recommendation is based on the Advisory Group's finding that the Court's existing practices have been successful in controlling expense and delay and instituting effective discovery and case management plans of the type suggested in 28 U.S.C. §473(a)(2) and (b)(1), and therefore should be maintained, memorialized, and continued in effect.

2. Improve/Enhance Existing Case Management Features

Improvements to the effectiveness of the Court's scheduling and case management procedures in controlling cost and delay and further CJRA compliance can be accomplished as follows:

(1) Require that a judicial officer (magistrate judge or district judge) conduct the initial Rule 16 scheduling conference (to enhance early neutral evaluation where it is practical and facilitate the imposition of disclosure, discovery, and scheduling limitations appropriate to the case), and prohibit the present practice sometimes used in which deputy clerks of court, law clerks, secretaries, or other staff conduct scheduling conferences.

At present, it is common for judges' courtroom deputies, secretaries, or law clerks to conduct the initial scheduling conference shortly after all answers are filed. Generally, they are under instructions from the presiding judge as to approximately when the trial date, pretrial conference, and associated disclosure and discovery deadlines should be set. Because the judges support their staffs and usually adhere to the dates set at these

conferences, they have generally been effective in the establishment of early, firm trial dates and associated deadlines. However, such conferences lack the qualities which personal involvement of a judicial officer can provide, including opportunity for early neutral evaluation of the case by a judicial officer, individualized, specific case management, identification of complex cases, imposition of appropriate discovery limitations and encouragement of cost effective discovery, commencement of meaningful settlement discussions, and identification of cases that might be appropriate for alternative dispute resolution. Although this will impose additional demands on our judicial officers' time, the Advisory Group believes that present caseloads permit this imposition, particularly in light of the benefits of such a requirement to improved case management that will enhance control of excessive cost and delay.

(2) The form order setting the initial Rule 16 scheduling conference should be amended to require that counsel for each party submit a short (no more than two-page) memorandum addressing the issues to be tried, discovery limits, the complexity of the case, suggested trial and other dates, and that counsel be prepared to discuss the merits of the case, its anticipated discovery needs, and the possibilities of settlement and alternative dispute resolution. This recommendation is made to ensure the meaningfulness of this initial conference in terms of effectuating the case management techniques set forth in 28 U.S.C. §473.

(3) Adopt a strictly uniform initial scheduling order to eliminate slight variations that presently exist from section to section (for example, differences in the time and timing of exchange of witness lists and experts' reports).

A common though minor complaint of lawyers concerning the Court's present case management and scheduling orders is that slight variations occur from judge to judge. For example, one judge's scheduling order may require simultaneous exchange of experts' reports on one date, while another may require plaintiffs to produce their experts' reports 30 days prior to defendants. The Advisory Group proposes that the Court adopt a uniform order and has attached one to its proposed plan (Appendix K) for the Court's consideration. Even if the Court disapproves of the specific form of order proposed by the Advisory Group, we strongly recommend that some form of uniform order be adopted by the Court and then used consistently by all judges.

(4) Amend the presently used form of scheduling order to require (a) disclosure by all parties to their opponents, on an early date, of all documents, damage computations, or other materials and information set forth in proposed amended Fed. R. Civ. Pro. 26(a), and (b) adherence to the limits on depositions set forth in proposed amended Fed. R. Civ. Pro. 30.

The Court has historically been ahead of its time in requiring effective early disclosure of otherwise discoverable information, including the identity, addresses, and general testimonial subject matter of fact and expert witnesses. Pending

amendments to the Federal Rules of Civil Procedure requiring additional disclosure and limits on depositions, particularly Rules 26(a) and 30(a)(2) and 30(d), which the Advisory Group endorses and expects to become effective shortly, present an opportunity for the Court to further control excessive cost and delay associated with discovery, by incorporating early deadlines for such disclosure and limits on depositions into its already proven and effective scheduling orders.

(5) Require that the district judge (or magistrate judge in cases in which the magistrate judge will conduct the trial) personally preside over the final pretrial conference and prohibit the practice occasionally used in which magistrate judges (in cases to be tried to district judges), deputy clerks of court, or law clerks conduct pretrial conferences.

The Advisory Group's reasoning in support of this recommendation and the conditions it is designed to address are the same as those set forth above relating to the Court's initial scheduling conferences.

(6) By Local Rule or by amending all applicable notices of the Court, provide that counsel and representatives of the parties may participate in all conferences with the Court (except the initial preliminary scheduling conference and the final pretrial conference) and all hearings on non-dispositive motions (except those at which live testimonial evidence will be presented) by telephone.

This recommendation, which embodies a practice already widely employed in the Court, is designed to limit costs associated with travel to the courthouse by counsel from outside downtown New Orleans and waiting time sometimes associated with the necessity faced by the Court of tight scheduling of several matters at one time and increased involvement in case management.

3. **Motion Practice**

The Advisory Group finds that the Court's present mechanisms for handling motions of all kinds, including its comprehensive Local Rules relating to motions, are extremely effective in controlling expense and delay and should be maintained in all respects. The Group specifically endorses the practice now common with most judges of the Court of deciding most motions on the briefs submitted without the need for expensive, time-consuming court appearances for oral argument.

The Advisory Group recommends that the following two modifications be made to present motion practice in the Court's plan to further CJRA's goal of eliminating unnecessary cost and delay:

(1) Set a limit of 60 days from the later of the hearing date or the date of submission of the final brief on the time during which a judge may hold a motion for decision under advisement before ruling.

Slow ruling on motions has not generally been a problem in the District. When it does occur, however, it not only results in delay in disposition of cases but also in additional costs where

discovery and trial preparation continue, and perhaps later turn out to have been unnecessary. This recommendation, which can only be effective to the extent it is self-policed by the Court, is aimed at limiting such cost and delay in those instances in which such rulings have been delayed.

(2) By Local Rule or in the Court's plan, require that all motions to continue trial dates be accompanied by the certificate of counsel, signed pursuant to Fed. R. Civ. Pro. 11, that his client has been advised by the signing attorney that the attorney has initiated or consented to a motion to continue the trial and that the client has been provided with a copy of the motion or consent.

Our docket sheet review indicates that such continuances are a principal cause of delay in the minority of cases which required too long to complete. This recommendation is designed to ensure that the parties to lawsuits are involved with their counsel in the decision to seek or acquiesce in a requested trial continuance and to impress upon counsel and the parties that such continuances are not granted lightly and may result in additional delay and expense, which should be incurred only if the parties themselves are willing to accept that likelihood.

The Advisory Group considered but rejected the suggestion in 28 U.S.C. §473(b)(3) that all requests for extensions of deadlines for completion of discovery or for postponement of the trial be signed by the attorney and the party making the request. The Advisory Group believes that such a requirement is unnecessary

in this District, where motions to continue trial dates are already closely scrutinized and where existing Local Rules require counsel to engage in discussions with each other and to be flexible and accommodating on discovery matters before submitting them to the Court. The Advisory Group concludes that in this District imposing the procedure suggested by CJRA Section 473(b)(3) would unnecessarily increase costs associated with obtaining litigant signatures without concomitant benefits in reducing delay.

4. Miscellaneous

In addition to the scheduling and case management modifications suggested above, the Court should:

(1) Impose on Requests for Admissions a limit of 25 and other limitations of the type applied to interrogatories in Local Rule 6.01.

For years, the Court in Local Rule 6.01 has imposed a similar limitation on interrogatories. That limitation has been effective in controlling excessive and expensive discovery. The Court's existing pretrial procedures and the modifications suggested herein are in part designed to foster disclosure and the reaching of stipulations which should limit the parties' need for voluminous Requests for Admissions, the use of which present at least as much potential for discovery abuse as interrogatories. The Advisory Group believes that such a limitation is reasonable and will help control discovery costs.

(2) Much of the success of case management techniques depends upon the Court's ability to police itself, for example in

the timely scheduling of the initial scheduling conference and in prompt motion rulings. To enhance the Court's efforts in this process, the Advisory Group recommends and has included in its proposed plan (Appendix K) provisions that the Chief Judge become more actively involved administratively with the presiding judge in monitoring timely scheduling of the initial preliminary scheduling conference, motion rulings, nonjury trial decisions, and in proposed "priority trial status" procedure for "bumped" cases.

(3) Maintain the present system of assigning multiple cases for trial on a single trial date or on any day during a single trial week because it is effective in moving cases toward settlement or other disposition short of trial and helps ensure that our judges maximize the amount of time during which they are actually trying cases. Our interviews of judges and docket sheet studies reveal that the Court generally sets trial dates within nine months of the preliminary pretrial conference. We recommend that this time frame be formally incorporated into the plan as a goal of the Court in each case, except those which are identified as complex at the initial conference.

In addition, the Court should identify and assign priority trial status to "bumped" civil cases (trials continued by the Court on its own initiative, usually for scheduling or docket reasons) that would enable such cases to be tried by preference and priority over all other civil cases on the earliest date on which they can be rescheduled. The Model Plan proposed by the Judicial

Conference includes two proposals for handling such cases, which the Advisory Group recommends in combination as follows:

When the demands of a judicial officer's criminal docket, or the unanticipated length of a civil trial, or some other emergency or unanticipated situation prevents the Court from adhering to a trial date, counsel should be advised as soon as practicable after the impediment appears. The judicial officer should: (a) Determine what other judicial officer, if any, of the District would be available to preside over the trial on the date scheduled. (b) Convene a telephone conference for the purpose of advising counsel and the parties of the situation. (c) Advise the parties of the availability of any other specifically identified judicial officer of the District to preside over trial on the date originally established. (d) Determine whether unanimous consent exists among counsel and the parties regarding reassignment of the case to another specifically identified judicial officer of the District for trial on the date scheduled. Where unanimous consent on reassignment exists, the assigned judicial officer shall effect reassignment of the case to the judicial officer identified by counsel and the parties. If no other judicial officer of the District is available with unanimous consent to preside over trial on the date originally established, the case should be identified in writing internally as a "priority trial status" case -- by the presiding judicial officer with a copy of such identification to the Chief Judge -- and every effort shall subsequently be made to schedule a first setting new trial date within three months, on

which date all counsel expect to be available without undue hardship or expense to the litigants.

The Advisory Group makes this recommendation in an attempt to minimize the additional cost and delay resulting to "bumped" cases which require redundant preparation when they are bumped and to ensure that no case is continued in this fashion more than once.

(4) Set a limit of 60 days from the later of the end of trial or submission of the final brief for decision by the presiding judicial officer in non-jury trials.

As with delay in motion rulings, the occasional slow issuance of decisions in non-jury trials taken under advisement at conclusion of the evidence has resulted in delay in an isolated number of cases. The Advisory Group appreciates the need for careful deliberation in all such cases; however, CJRA provides what appears to be a mandate for such recommendations, and the Advisory Group believes that such a limit is reasonable.

(5) Make increased, formalized use of what is anticipated to be a growing corps of senior judges as assigned backups to the active judges for the primary purpose of presiding over jury trials. This recommendation is made with particular reference to the priority trial status method of reassigning "bumped" cases for trial outlined in preceding paragraphs.

5. Active Continuing Study Topics

The Advisory Group finds that various judges in the District have from time to time experimented with the imposition of

discovery limits for particular types of cases and various methods of alternative dispute resolution, including mediation, summary jury trials, and minitrials, on a case-by-case basis. In addition, the existing scheduling conference which is held for each case in the District has more often than not succeeded in placing each case on an individualized time track to trial. Our proposed plan, Appendix K, includes a provision which authorizes, but does not require, the Court to employ alternative dispute resolution techniques in appropriate cases. It also encourages the Court through an enhanced procedure for the initial preliminary scheduling conference to tailor discovery limitations, trial, and other important dates to the individualized needs of each case. However, the Group finds no need within the District for a formalized plan that institutionalizes either ADR or so-called "tracking" at this time. Noting the continuing nature of the Advisory Group's function, 28 U.S.C. §475, and wary of changing circumstances (e.g. the imminent eligibility of many of our judges for senior status and the possibility of accompanying extended judgeship vacancies) that may negatively impact the Court's present ability to control cost and delay by managing its case load, the Group also recommends that:

(1) The Chief Judge appoint a study group, consisting of one district judge and one magistrate judge, two members of the Advisory Group, and one lawyer and one litigant representative not on the Advisory Group, to examine the "tracking" procedure outlined in the model plan promulgated by the Judicial Conference of the

United States pursuant to 28 U.S.C. §477 of identifying cases by their type and complexity and imposing predetermined discovery limits.

(2) The Chief Judge appoint a study group, consisting of one district judge and one magistrate judge, two members of the Advisory Group, and one lawyer and one litigant representative not on the Advisory Group, to examine whether a court-annexed program for alternative dispute resolution should be established in the District, and if so the type of ADR.

Each study group should prepare a written report and recommendations to be submitted to the full Advisory Group and the Chief Judge no later than one year from the effective date of the Court's initial Expense and Delay Reduction Plan.

(B) Explain how the "recommended actions include significant contributions to be made by the court, the litigants, and the litigants' attorneys" (§472(c)(3)).

The foregoing recommendations ensure significant contributions by the Court by requiring (a) judicial officers rather than their staffs to conduct the preliminary scheduling conference and the final pretrial conference to enhance individualized, specific case management and early neutral evaluation; (b) agreement on a strictly uniform scheduling order and pretrial notice; (c) an internally monitored system of assigning priority trial status to "bumped" cases; and (d) self-policing by the Court of the proposed time limits on motion rulings and non-jury trial decisions.

Litigants contribute to the success of these recommendations by participation with their counsel in settlement considerations and conferences, and in voluntary and timely disclosure of information. The Advisory Group also believes that litigant contributions to minimizing excessive cost and delay can be enhanced by improved litigant understanding of the federal litigation process. In this regard, the Group has reviewed and is impressed by the publication recently prepared and published in the Eastern and Western Districts of Arkansas entitled "Your Day in Court: The Federal Court Experience." This Advisory Group intends to explore ways in which permission of the Arkansas United States District Courts and its Advisory Groups, and funding for publication of a similar booklet, might be obtained, either for local distribution or nationally through the Federal Judicial Center or other agency.

The recommendations require significant contributions from lawyers by requiring their participation in enhanced case management activities, including their preparation of a short memorandum for use at a more substantive preliminary scheduling conference and in priority resetting of "bumped" civil cases. They will also bear the responsibility of the certificate required in connection with motions to continue trial dates.

Finally, the Court, litigants, and attorneys have all been represented in the Advisory Group which has prepared this report and will all be represented on the two study groups suggested by these recommendations.

(C) Explain (as required by §472(b)(4)) how the recommendations comply with §473, which requires the court, when formulating its plan, to consider six principles and techniques for litigation management and cost and delay reduction.

The Advisory Group finds that the Eastern District of Louisiana has for years prior to CJRA employed case management procedures which substantially incorporate the six techniques set forth in 28 U.S.C. §473. By combining those existing procedures with the recommendations made herein in a formal plan, each of these techniques will be enhanced.

Our recommendation that a judicial officer preside over an enhanced initial preliminary scheduling conference and that counsel submit a brief memorandum for such conferences and be prepared to discuss specific CJRA mandated topics, replacing the present practice of staff-conducted scheduling conferences, will improve individualized, specific case management, early neutral evaluation, judicial officer control of scheduling and extent of discovery, and identification of complex cases as described in 28 U.S.C. §473(a)(1), (2), and (3) and §473(b)(1) and (4).

Voluntary exchange of information through the use of cooperative discovery devices suggested in 28 U.S.C. §473(a)(4) has long been a part of the Court's case management procedures, which for years have required early disclosure of fact and expert witness identities, the general subject of their testimony, and written experts' reports. Incorporation of the new disclosure requirements and deposition limits in soon-to-be amended Fed. R. Civ. Pro. 26 and 30, as suggested in our recommendations, will further this technique.

The limits on consideration of discovery motions proposed in 28 U.S.C. §473(a)(5) have been part of our Court's procedures for years, as required by Local Rule 2.11E, and will continue to be so.

Individual judges in the Eastern District have referred appropriate cases to alternative dispute resolution in the past, as suggested by 28 U.S.C. §473(a)(6). Our proposed plan specifically authorizes them to continue to do so and provides for further study of a court-annexed ADR program.

Our Court has for years in its standing pretrial notice required attendance at pretrial conferences by attorneys with authority to bind the parties, as suggested in 28 U.S.C. §473(b)(2). It has also required in appropriate cases, but not always, that party representatives participate with their counsel in settlement conferences, as noted in 28 U.S.C. §473(b)(5). Both techniques are authorized for continued use in our proposed plan. Finally, the parties' signature requirement suggested in 28 U.S.C. §473(b)(3) has been considered by the Advisory Group but rejected as previously discussed at pages 35-36 of this report. Instead, the less intrusive and less cumbersome attorney certificate discussed therein has been proposed.

(D) Make a recommendation that the court develop a plan or select a model plan and state the basis for that recommendation (§472(b)(2)).

The Advisory Group has studied the Model Civil Justice Expense and Delay Reduction Plan, dated October 1992, prepared and transmitted by the Judicial Conference of the United States. It

has also received and reviewed the adopted plans of the pilot courts and early implementation districts and the Report of the Task Force on the Civil Justice Reform Act of the American Bar Association Section of Litigation. Because the Advisory Group has concluded that the Court's existing procedures have been successful in controlling cost and delay and can be improved as suggested herein to more than comply with CJRA, the Advisory Group recommends that the Court adopt a plan which embodies its own proven successful practices with the changes herein recommended, but following the format suggested by the model plan.

For the Court's consideration and ease of reference, the Advisory Group attaches to this report as Appendix K a draft of an Expense and Delay Reduction Plan it proposes for adoption by the Court. The proposed plan attaches a uniform scheduling order and pretrial notice, and pretrial order preparation instructions, based upon the Court's existing forms but slightly revised to incorporate the foregoing recommendations of the Advisory Group.

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This report is respectfully submitted on behalf of all members of the Advisory Group through its chairman and its reporter to the Honorable Morey L. Sear, Chief Judge, United States District Court for the Eastern District of Louisiana, this 25th day of January, 1993.

DAVID R. NORMANN,
Chairman

JOSEPH C. WILKINSON, JR.,
Reporter

APPENDIX A

MEMBERSHIP OF THE ADVISORY GROUP

David R. Normann, professor of law at Loyola University Law School in New Orleans, is Chairman of the Advisory Group. Until 1981, he was a partner with the firm of Normann and Normann where he had an active trial practice in the federal courts. In 1981 he accepted a full time teaching position with Loyola Law School, and from 1987 to 1992 served as Associate Dean for Academic Affairs at the law school. In May 1992, he resigned as Associate Dean to return to full time teaching. His special teaching interests include maritime law, federal civil procedure, legal ethics, and trial advocacy. He has published articles in legal journals and is the author of a case book on maritime law.

M. Nan Alessandra is a partner with the law firm of Phelps Dunbar in New Orleans. She was graduated cum laude in 1985 from Loyola University School of Law, where she was a member of the Loyola Law Review. Prior to joining Phelps Dunbar in 1986, she served as law clerk to the Hon. A.J. McNamara of the United States District Court for the Eastern District of Louisiana. She has focused her litigation efforts on constitutional challenges, civil rights, and employment/labor litigation. She is a member of the American, Federal, New Orleans, and the Fifth Circuit Bar Associations and a barrister in the Thomas More Inn of Court.

Peter J. Butler is a partner with the law firm of Locke, Purnell in New Orleans. He obtained his law degree in 1959 and his

CPA certificate in 1962. After graduating from law school, he served as law clerk to the Hon. Herbert W. Christenberry, then Chief Judge of the United States District Court for the Eastern District of Louisiana. Since then, he has been actively engaged in the practice of law.

Tucker Couvillon, III is former Vice President - Legal of Murphy Exploration & Production Company and corporate secretary of Ocean Drilling and Exploration Company in New Orleans. He earned his B.A. degree in 1964 and his J.D. degree in 1967, both from Tulane University.

William C. Gambel is a partner with the law firm of Milling, Benson, Woodward, Hillyer, Pierson & Miller in New Orleans. He earned his LL.B. degree in 1964 from Loyola University in New Orleans and his LL.M. in taxation in 1965 from Boston University.

Charles Hanemann, Jr. is a partner with the law firm of Henderson, Hanemann & Morris in Houma. He earned his B.S.S. degree in 1960 from Loyola University in New Orleans and his LL.B. in 1963 from Tulane University, where he earned Order of the Coif and Law Review honors.

Roy J. Rodney, Jr. is a director in the law firm of McGlinchey Stafford Lang in New Orleans and heads one of the firm's litigation divisions. Mr. Rodney recently served as Chairman of the Civil Trial Advocacy Section for the National Bar Association and is a frequent speaker and lecturer on the subject of trial

techniques, advocacy and federal practice. He currently serves as Vice President of the National Bar Association.

Harry A. Rosenberg became the United States Attorney for the Eastern District of Louisiana in 1991. Prior to that time, he was a partner with the firm of Phelps Dunbar in New Orleans. He earned his B.A. degree in 1969 from Case Western Reserve University and his J.D. degree in 1972 from Tulane University, where he was an associate editor of the Tulane Law Review. He served as law clerk to the Hon. Jack M. Gordon of the United States District Court for the Eastern District of Louisiana.

Michael X. St. Martin is the senior partner with the law firm of St. Martin, Lirette, Shea, Watkins & McNabb in Houma. He earned his law degree from Loyola University in 1967. He is the immediate past President of the Louisiana Trial Lawyers Association. He is currently a board member of the Louisiana Council on Child Abuse and is also on the Loyola School of Law Visiting Committee.

Joseph L. Waitz, Sr. is a partner with the law firm of Waitz & Downer in Houma. He earned his B.S. degree and his LL.B. degree from Louisiana State University in 1959.

Charles W. Wall, Sr., Ph.D. (honorary) is a retired shipyard executive and businessman who resides in Gretna, Louisiana. His business interests have included founder-owner of Wall Shipyard, Inc.; real estate development; and involvement in the merger of Pan-Am and National Airlines. He has been active in civic affairs, including service as vice president of the Chamber

of Commerce over Area Councils, chairman of the Dixie Freeway Committee, contributor to parallel bridge development, President of the International House, and head of the Committee for a School of Naval Architecture at the University of New Orleans, chiefly responsible for getting a new engineering building at UNO. He has chaired and worked on numerous other business and civic committees and projects.

Loretta G. Whyte is the Clerk of Court for the United States District Court for the Eastern District of Louisiana. She earned her B.A. degree from Loyola University in New Orleans and her J.D. degree from Loyola University in 1970. She served as law clerk to the Hon. Fred J. Cassibry, United States District Judge in the Eastern District of Louisiana.

The Group's Reporter is Joseph C. Wilkinson, Jr., a partner with the law firm of Lemle & Kelleher in New Orleans. He earned his B.A. degree in journalism from Louisiana State University in 1976 and his J.D. degree cum laude from Tulane University in 1980, where he was an associate editor of the Tulane Law Review. He served as law clerk to the Hon. Morey L. Sear, United States District Judge in the Eastern District of Louisiana, in 1980-82. He is the author of several articles published in various law reviews and legal periodicals.

Edward F. Renwick is a consulting expert for the Advisory Group. He earned his A.B. degree from Georgetown University in 1960, his M.A. degree in political science from the University of Arizona in 1962, and his Ph.D. in political science in 1968 from

the University of Arizona. He is director of the Institute of Politics at Loyola University in New Orleans. He is a widely recognized political pollster and analyst of political affairs with expertise in public opinion surveying and statistical analysis.

APPENDIX B

OPERATING PROCEDURES OF THE ADVISORY GROUP

(1) Meetings, minutes: The Advisory Group met in person five times on the following dates: May 2, 1991; May 16, 1991; January 8, 1992; December 17, 1992; and January 7, 1993. Each meeting was held at the courthouse, and written minutes of each meeting were prepared and circulated. Between meetings of the Group as a whole, the chairman and reporter met frequently to plan agendas and review materials and also met with representatives of the Advisory Groups for the Western and Middle Districts of Louisiana in March 1992.

(2) Statistical review by Group members: Through the auspices of the Clerk of Court and Chief Judge Sear, the Advisory Group and its consultant were provided with voluminous court statistics for various years prepared by the Administrative Office of the United States Courts, the Federal Judicial Center and the Judicial Conference of the United States.

(3) Interim written reports and recommendations: Several interim written reports were prepared by or for the Advisory Group as its work progressed. The chairman and reporter prepared and circulated an initial report in 1991, summarizing the results of the Group's initial review of statistics and docket assessment and recommending further study and operating procedures. Three additional interim reports were prepared by the Group's reporter and expert consultant, all three of which have been

incorporated into the Group's final report as Appendices H, I, and J.

(4) Expert Consultant: The Group retained Dr. Edward F. Renwick, an expert in the fields of analysis of statistics and public surveying to (a) analyze the available statistics concerning the District's standing on the issue of length of time required for civil litigation and to discern any trends in the types of cases being filed in our District, (b) review the Group's draft survey questionnaires and offer comments and proposed revisions before they were circulated, and (c) supervise the survey, organize and analyze responses received to the questionnaires, and prepare a report.

(5) Case sample study (docket sheet review and mail survey): With the assistance of John Shapard of the Federal Judicial Center, the Group selected a representative sample of 156 recently concluded civil actions for further study, all as described in the reporter's memorandum attached as Appendix J. Such further study included (a) docket sheet review and analysis conducted by members of the Group; (b) questionnaires to the attorneys involved in each case; and (c) questionnaires to the litigants involved in each case. Samples of the questionnaires ultimately used and the docket sheet review form are attached as Appendices C, D, and E.

(6) General questionnaires: From time to time, the Advisory Group received requests from lawyers or the general public for input into the Group's evaluation process. Each person making

such a request was provided with a form of General Questionnaire by the Group's reporter. All such completed questionnaires were provided to the Group's expert consultant, Dr. Renwick, who included them in his report attached as Appendix I. A sample questionnaire of this type is attached as Appendix F.

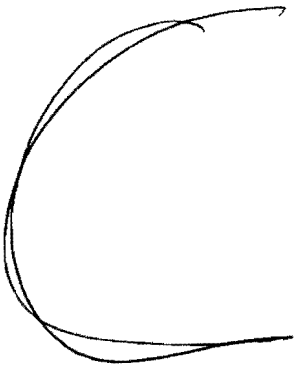
(7) Judge Interviews: Personal interviews were conducted by two-person teams of Advisory Group members of district judges and magistrate judges in the District. An outline of topics and questions discussed with the judges is attached as Appendix G.

(8) Publicity and Education: In an effort to educate the Advisory Group itself concerning its functions and responsibilities and to inform and involve the public concerning CJRA and its Advisory Groups, our Advisory Group's reporter was involved in the following: (a) Participant in a two-day seminar concerning CJRA conducted by the Federal Judicial Center and Administrative Office of United States Courts for representatives from 45 districts, St. Louis, Missouri, April 8-9, 1992; (b) Speaker at a seminar on CJRA by Tulane University School of Law Continuing Legal Education, New Orleans, Louisiana, September 26, 1992; (c) Author of an article on CJRA in The Advocate, Federal Bar Association (New Orleans Chapter) newsletter, Volume 4, Pages 3-4, (Fall 1991); and (d) Author of an article on the three Louisiana CJRA Advisory Groups in the Louisiana Bar Journal, Volume 40, Page 165 (1992).

The Advisory Group intends to make its final report available to the public by providing it to daily newspapers within

the District, the Louisiana Bar Journal, and the newsletter of the local chapter of the Federal Bar Association. In addition, the Office of the Clerk of Court will prepare and post a notice concerning its availability to the public and the bar.

(9) Budget: The Advisory Group has expended to date or expects to expend by completion of its report the following amounts: Fiscal Year 1991: expert consultant's fees, $7,500.00; reporter's compensation, $2,156.00; reporter's costs for photocopies, postage, and long distance telephone calls, $95.00. Fiscal year 1992: secretarial support, $498.00; long distance telephone calls, office supplies, photocopying, postage, and other expenses associated with the mail survey and other study activities, $1,745.00; reporter's compensation, $4,000.00; expert consultant's fees, $2,500.00. Fiscal year 1993 (anticipated): $11,600.00 budgeted for printing and other publication expenses for the final report. Amount presently allocated: $2,775.00.



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CIVIL JUSTICE REFORM ACT ADVISORY GROUP
FOR THE EASTERN DISTRICT OF LOUISIANA

QUESTIONS FOR LITIGANTS

1. Were you the plaintiff, defendant, or third party in the case noted on the cover letter? (Circle one answer)

1. Plaintiff
2. Defendant
3. Third party

4-

2. Were the costs incurred by you on this matter? (Circle one answer)

1. Much too high
2. Slightly too high
3. About right
4. Slightly too low
5. Much too low

5-

3. If you believe the cost of litigation was too high, what actions should your attorney or the court have taken to reduce the cost of this matter (you may circle one or more than one)?

A. Hold pre-trial activities to a firm schedule 6-
B. Set and enforce limits on allowable discovery 7-
C. Conduct preliminary or scheduling conferences 8-
D. Eliminate preliminary or scheduling conferences 9-
E. Narrow issues through conferences or other methods 10-
F. Rule promptly on pre-trial motions 11-
G. Refer the case to alternative dispute resolution, such as mediation, summary trial, or arbitration 12-
H. Set an early and firm trial date 13-
I. Conduct or facilitate settlement discussions 14-
J. Exert firm control over trial 15-
K. Other (please specify) 16-
17-

4. Was the time that it took to resolve this matter, from date of filing suit to final disposition in the trial court? (Circle one answer)

1. Much too long
2. Slightly too long
3. About right
4. Slightly too short
5. Much too short
6. The time involved was not important.

18-

5. If you believe that it took too long to resolve your case, what actions should your attorney or the court have taken to resolve your case more quickly (you may circle one or more than one)?

A.	Hold pre-trial activities to a firm schedule	19-
B.	Set and enforce limits on allowable discovery	20-
C.	Conduct preliminary or scheduling conferences	21-
D.	Eliminate preliminary or scheduling conferences	22-
E.	Narrow issues through conferences or other methods	23-
F.	Rule promptly on pre-trial motions	24-
G.	Refer the case to alternative dispute resolution, such as mediation, summary trial, or arbitration	25-
H.	Set an early and firm trial date	26-
I.	Conduct or facilitate settlement discussions	27-
J.	Exert firm control over trial	28-
K.	Other (please specify)	29-
		30-

6. Was arbitration, summary trial, mediation, or other form of alternative dispute resolution used in your case? (Circle <u>one</u> answer)

1. No
2. Yes

31-

If yes, please describe the method used and the results. 32- 33- 34- 35-

If no, was the possibility of using arbitration, summary trial, mediation or other form of alternative dispute resolution even discussed with you by your attorney or the Court?

____ by attorney?	____ by the Court?		
1. No	1. No	36-	37-
2. Yes	2. Yes		

7. Please add any comments or suggestions regarding the time and cost of litigation in the federal courts. 38-
39-
40-
41-
42-

8. Please estimate the amount of money which was at stake in this case.

$_____ 43-
44-

9. What type of fee arrangement did you have with your attorney? (Circle one answer)

1. Hourly rate 45-
2. Hourly rate with a maximum
3. Set fee
4. Contingency
5. Other - please describe

10. Did this arrangement in your opinion result in reasonable fees being paid to your attorney? (Circle one answer)

1. Yes 46-
2. No
3. Do not know

Comments: 47-
48-
49-
50-
51-

11. Please indicate the total costs you spent on this case for each of the categories listed below. If you are unable to categorize your costs, please indicate the <u>total</u> cost only.

A.	Attorneys' Fees	$_____	52-
B.	Attorneys' Expenses (postage, photocopying, travel expenses, etc.)	$_____	53-
C.	Consultants	$_____	54-
D.	Expert Witnesses	$_____	55-
E.	Other (please describe)	$_____	56-
F.	Total Cost of Litigation	$_____	57-

Thank you for your time and comments. <u>Please return in the enclosed postage prepaid envelope</u> to:

Civil Justice Reform Act Advisory Group
For the Eastern District of Louisiana
c/o Clerk of Court
500 Camp Street
New Orleans, Louisiana 70130.

If you have any questions, please call any member of the Advisory Group with whom you may be acquainted.

The general types:

58-

-1 Contracts or written instruments
-2 Torts
-3 Miscellaneous statutory actions

The specific types:

59-

-x Marine contracts
-y Insurance contracts
-o Other contracts
-1 Negotiable instruments
-2 Foreclosure
-3 Marine personal injury
-4 Product liability
-5 Motor vehicle personal injury
-6 Other tort
-7 Civil rights/jobs
-8 Other civil rights
-9 Labor

60-

-x Potentially complex
-y All other

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CIVIL JUSTICE REFORM ACT ADVISORY GROUP
FOR THE EASTERN DISTRICT OF LOUISIANA

QUESTIONS FOR ATTORNEYS

A. MANAGEMENT OF THIS LITIGATION

1. "Case management" refers to oversight and supervision of litigation by a judge or magistrate or routine court procedures such as standard scheduling orders. Some civil cases are intensively managed through actions like detailed scheduling orders, frequent monitoring by judicial officers of discovery and motion practice, substantial court effort to settle the case or to narrow issues, or by requiring rapid progress to trial. Some cases may be largely unmanaged, with the pace and course of litigation left primarily to counsel and with court intervention only when requested.

How would you characterize the level of case management in this case? Please circle one answer. 4-

1. Intensive
2. High
3. Moderate
4. Low
5. Minimal
6. None
7. I'm not sure

2. Listed below are several case management actions that might have been taken by the court in the litigation of this case. For each listed action, please circle one number to indicate whether or not the court took such action in this case.

	TAKEN	NOT TAKEN	NOT SURE	NOT APPLICABLE	
Hold pre-trial activities to a firm schedule	1	2	3	4	5-
Set and enforce limits on allowable discovery	1	2	3	4	6-
Initial preliminary or scheduling conference handled by judge or magistrate	1	2	3	4	7-
Initial preliminary or scheduling conference handled by clerk	1	2	3	4	8-

	TAKEN	NOT TAKEN	NOT SURE	NOT APPLICABLE	
Narrow issues through conferences or other methods	1	2	3	4	9-
Rule promptly on pre-trial motions	1	2	3	4	10-
Refer the case to alternative dispute resolution, such as mediation or arbitration	1	2	3	4	11-
Set an early and firm trial date	1	2	3	4	12-
Set limits on amount or scope of discovery	1	2	3	4	13-
Conduct or facilitate settlement discussions	1	2	3	4	14-
Exert firm control over trial	1	2	3	4	15-
Other (please specify)	1	2	3	4	16-

B. TIMELINESS OF LITIGATION IN THIS CASE

3. Our records indicate this case took about ____ months from filing to final disposition in the trial court. Please circle the one answer below that reflects the duration of the case for your client.

1. The duration given above is correct for my client. 17-
2. The duration given above is not correct for my client. My client was in this case for approximately ____ months.
3. This case has not yet reached disposition for my client.
4. The duration of this case for my client was not important.

4. How would you evaluate the time that elapsed from filing to disposition for your client in this case? Please circle <u>one</u> response from answer 1-4. If you select either "2" or "3", please answer the subsidiary question.

1. The time from filing to disposition was reasonable. 18-
2. The time from filing to disposition was too long.
3. The time from filing to disposition was too short.
4. The time from filing to disposition was not important.

- If the case actually took longer than you believed reasonable, please indicate what factors contributed to the delay (circle one or more):

i. Excessive case management by the court 19-
ii. Inadequate case management by the court 20-
iii. Excessive discovery 21-
iv. Dilatory actions by counsel 22-
v. Dilatory actions by the litigants 23-
vi. Court's failure to rule promptly on motions 24-
vii. Backlog of other cases on court's calendar 25-
viii. Other (please specify) 26-

- If the time allowed from filing to disposition of the case was too short, please explain why you believe it was too short.

27-
28-

5. Do you believe that delay in disposing of civil cases is generally a problem in the Eastern District of Louisiana?

1. Yes 29-
2. No

6. If delay in disposing of civil cases is a problem in this district, what suggestions or comments do you have for reducing those delays? 30-
31-
32-
33-
34-

7. Do you believe that present case management procedures used in this district permit adequate time or opportunity to bring a civil case to disposition?

1. Yes
2. No 35-

C. COSTS OF LITIGATION IN THIS CASE

This section seeks information about the costs of litigating this case. When answering these questions, please take into account only activity that was in direct preparation for or occurred subsequent to filing the case in U.S. District Court and only through the time of final disposition of the district court proceedings. Do not take into account activity related to state court or administrative proceedings, settlement efforts that took place prior to federal court filing, or appellate litigation.

8. Approximately how many hours were spent on this case by attorneys representing your client? _____ 36-

9. What was the attorney fee arrangement with your client? Please circle one answer.

1. Contingent fee
2. Hourly fee
3. Salaried attorney
4. Set fee
5. Hourly fee with maximum
6. Other. Please specify: _____ 37-

10. Approximately what percentage of the total litigation costs for your client were accounted for by attorneys' fees?

_____% 38-

11. What is the approximate portion of both the total litigation costs and time for your client that may be attributed to each of the following activities?

ACTIVITY	COSTS	TIME	
Preliminary investigation of the case, drafting complaint, or answer	_____%	_____%	39- 40-
Discovery, including motions related to discovery	_____%	_____%	41- 42-
Other motions (e.g., summary judgment, motions to dismiss, TRO)	_____%	_____%	43- 44-
Negotiations for settlement or other stipulated disposition	_____%	_____%	45- 46-
Status conferences, scheduling conferences or hearings, final pre-trial conferences, and other case management related events	_____%	_____%	47- 48-
Trial	_____%	_____%	49- 50-
Other (please specify) _____	_____%	_____%	51- 52-
TOTALS:	100%	100%	

12. To what extent was your client concerned about possible consequences beyond the monetary or other specific relief sought in this specific case, such as possible future litigation based on similar claims or the possibility of a legal precedent of significant consequence for your client? Please circle one answer.

1. Such consequences were of dominant concern to my client. 53-
2. Such consequences were of some concern to my client.
3. Such consequences were of little or no concern to my client.
4. I'm not sure.

13. Please estimate the amount of money at stake in this case. 54-
$_____

14. Were the fees and costs incurred in this case by your client (circle one answer)?

1. Much too high
2. Slightly high
3. About right
4. Slightly low
5. Much too low
6. I can't say

55-

15. If you believe the costs of this litigation were high, which of the following, if any, were significant causes of the excess costs? Please circle all that apply.

A. Excessive or inapposite case management by the court 56-
B. Inadequate case management by the court 57-
C. Actions by counsel or parties 58-
D. Excessive discovery 59-
E. Factors related neither to the court's case management nor to actions by counsel or parties (e.g., the demands of the court's criminal caseload or mistaken legal decisions by the court) 60-
F. Others (please specify) 61-

16. If you believe costs associated with civil litigation in this district are generally too high, what suggestions or comments do you have for reducing the costs?

62-
63-
64-
65-

17. Please use the space below (and on the back of this page, if you wish) for any additional comments you would like to make about management of this case in particular or about management of litigation by the federal courts in general.

Thank you for your time and cooperation. Please return in the enclosed, self-addressed, postage prepaid envelope to:

Civil Justice Reform Act Advisory Group
For the Eastern District of Louisiana
c/o Clerk of Court
500 Camp Street
New Orleans, Louisiana 70130.

If you have any questions, please call any member of the Advisory Group with whom you may be acquainted.

The general types: 66-

-1 Contracts or written instruments
-2 Torts
-3 Miscellaneous statutory actions

The specific types: 67-

-x Marine contracts
-y Insurance contracts
-o Other contracts
-1 Negotiable instruments
-2 Foreclosure
-3 Marine personal injury
-4 Product liability
-5 Motor vehicle personal injury
-6 Other tort
-7 Civil rights/jobs
-8 Other civil rights
-9 Labor

-x Potentially complex 68-
-y All other

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CIVIL JUSTICE REFORM ACT ADVISORY GROUP
FOR THE EASTERN DISTRICT OF LOUISIANA

REVIEW OF CASE DOCKET SHEET

A. GENERAL INFORMATION

1. Case Name _____

2. Case Number _____

3. Type of Case _____

4. Judge _____

5. Total Time for Disposition _____ months (from filing of complaint to entry of final judgment for all parties)

6. How was this case disposed of (circle one answer)?

   1. Dismissed for lack of prosecution
   2. Judgment entered on motion to dismiss
   3. Judgment entered on motion for summary judgment
   4. Voluntary dismissal/settlement
   5. Trial
   6. Other (please specify)

B. LENGTH OF TIME FOR VARIOUS STAGES OF CASE

We are seeking information on how long it takes for a case to progress through various stages such as pleading, discovery, trial, etc. We acknowledge it may be difficult in some cases to get this information from the materials (docket sheet and scheduling order) furnished to you. If so, please indicate by marking "NA" in the appropriate slot.

1. Date of Filing Complaint _____

2. Date of Service of Summons _____
   (list last date of service if more than one defendant)

3. Date of Filing any Amended Complaint _____
   (list date of last amended complaint filed if more than one complaint filed)

4. Date of Filing Answer _____
(list date of last answer filed to the final complaint or amended complaint)

5. Date of Filing Rule 16 Scheduling Order (if any) _____

6. Date discovery completed _____

7. Date of Final Pre-Trial Conference _____

8. Date of trial (if any)_____

C. RULE 16 SCHEDULING ORDERS

1. Was a scheduling order entered in this case (circle one answer)?

1. Yes
2. No

2. If yes, note the following (from the initial scheduling order, if more than one was issued)

A. _____ months allowed, from date of order, to amend pleadings

B. _____ months allowed, from date of order, for completing discovery

C. _____ months, from date of order, to scheduled trial date

D. _____ months, from date of order, to filing any dispositive motions (i.e., motions for summary judgment)

3. Were revised scheduling orders entered extending dates set in the initial scheduling order?

1. Yes
2. No

Why?

D. DISCOVERY

1. Number of deposition notices filed:

_____ total
_____ fact witnesses (if possible to tell)
_____ expert witnesses (if possible to tell)

2. Number of motions filed related to discovery (eg. motions to compel, motions for protective order, motions for discovery motions). _____

3. Number of formal court orders related to discovery. _____

4. Number of court appearances related to discovery:

_____ motions
_____ discovery scheduling/status
_____ other

E. MOTION DISPOSITION TIME

For each substantive motion (exclude unopposed motions and discovery motions -- include motion to dismiss, motion to strike pleadings, motion for summary judgment, etc.), please complete the following. Please use an extra sheet if more than four motions were filed. (If no response or ruling was filed, indicate with "NR".)

Type of Motion	_____	_____	_____	_____
2. Date of filing the motion	_____	_____	_____	_____
3. Date of filing opposition brief	_____	_____	_____	_____

_____ days elapsed between 2 and 3

Date of hearing or oral argument, if any (write "None" if none was held)	_____	_____	_____	_____

_____days elapsed between 3 and 4 (if applicable)

Date of filing the Court's ruling on motion	_____	_____	_____	_____

_____ total days elapsed between 2 to 5

6. Were there any continuances or extensions of time (circle one answer for each)?

1. Yes	1. Yes	1. Yes	1. Yes
2. No	2. No	2. No	2. No

7. If yes, what was the total number of days of the continuance or extension?

_____ _____ _____ _____

F. GENERAL NOTES AND COMMENTS

1. Based on your review of the docket sheet, do you believe the time it took to resolve this matter was (circle one answer)

1. much too long
2. slightly too long
3. about right
4. slightly too short
5. much too short

2. Based on your review, list the principal factors which contributed to the length of time it took to dispose of this case (i.e. if it was quickly disposed of -- why? and if not, what slowed it down?).

_____

NAME OF GROUP MEMBER
CONDUCTING REVIEW

_____

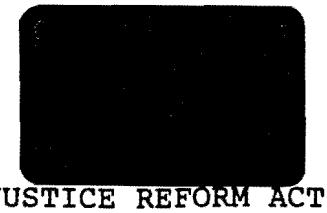
DATE

The general types:

-1 Contracts or written instruments
-2 Torts
-3 Miscellaneous statutory actions

The specific types:

-x Marine contracts
-y Insurance contracts
-o Other contracts
-1 Negotiable instruments
-2 Foreclosure
-3 Marine personal injury
-4 Product liability
-5 Motor vehicle personal injury
-6 Other tort
-7 Civil rights/jobs
-8 Other civil rights
-9 Labor
-x Potentially complex
-y All other



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CIVIL JUSTICE REFORM ACT ADVISORY GROUP
FOR THE EASTERN DISTRICT OF LOUISIANA

GENERAL QUESTIONNAIRE

A. MANAGEMENT OF LITIGATION

1. "Case management" refers to oversight and supervision of litigation by a judge or magistrate or routine court procedures such as standard scheduling orders. Some civil cases are intensively managed through actions like detailed scheduling orders, frequent monitoring by judicial officers of discovery and motion practice, substantial court effort to settle the case or to narrow issues, or by requiring rapid progress to trial. Some cases may be largely unmanaged, with the pace and course of litigation left primarily to counsel and with court intervention only when requested.

How would you characterize the level of case management generally in this District? Please circle one answer.

1. Intensive
2. High
3. Moderate
4. Low
5. Minimal
6. None
7. I'm not sure

4-

2. Listed below are several case management actions that might be taken by the court in litigation. For each listed action, please circle one number to indicate whether or not the court generally takes such action in this District.

	WAS TAKEN	WAS NOT TAKEN	NOT SURE	NOT APPLICABLE	
Hold pre-trial activities to a firm schedule	1	2	3	4	5-
Set and enforce limits on allowable discovery	1	2	3	4	6-
Initial preliminary or scheduling conference handled by judge or magistrate	1	2	3	4	7-
Initial preliminary or scheduling conference handled by clerk	1	2	3	4	8-

	WAS TAKEN	WAS NOT TAKEN	NOT SURE	NOT APPLICABLE	
Narrow issues through conferences or other methods	1	2	3	4	9-
Rule promptly on pre-trial motions	1	2	3	4	10-
Refer the case to alternative dispute resolution, such as mediation or arbitration	1	2	3	4	11-
Set an early and firm trial date	1	2	3	4	12-
Set limits on amount or scope of discovery	1	2	3	4	13-
Conduct or facilitate settlement discussions	1	2	3	4	14-
Exert firm control over trial	1	2	3	4	15-
Other (please specify)	1	2	3	4	16-

B. TIMELINESS OF LITIGATION

3. How would you generally assess the time required from filing to disposition of cases in this District? Please circle one response from answer 1-4. If you select either "2" or "3", please answer the subsidiary question.

1. The time from filing to disposition was reasonable. 17-
2. The time from filing to disposition was too long.
3. The time from filing to disposition was too short.
4. The time from filing to disposition was not important.

- If cases actually take longer than you believe reasonable, please indicate what factors contribute to the delay (circle one or more):

i.	Excessive case management by the court	18-
ii.	Inadequate case management by the court	19-
iii.	Excessive discovery	20-
iv.	Dilatory actions by counsel	21-
v.	Dilatory actions by the litigants	22-
vi.	Court's failure to rule promptly on motions	23-
vii.	Backlog of other cases on court's calendar	24-
viii.	Other (please specify)	25-

- If the time allowed from filing to disposition of cases is generally too short, please explain why you believe it is too short. 26-
27-

4. Do you believe that delay in disposing of civil cases is generally a problem in the Eastern District of Louisiana?

1. Yes 28-
2. No

5. If delay in disposing of civil cases is a problem in this district, what suggestions or comments do you have for reducing those delays (circle one or more)?

A.	Increase case management by the court	29-
B.	Decrease case management by the court	30-
C.	Limit discovery (number of depositions, document requests, admissions, interrogatories)	31-
D.	Set deadlines on rulings on matters under advisement	32-
E.	Make alternative judges available to try cases continued by judges to whom they are originally assigned	33-
F.	Other (please specify)	34-

6. Do you believe that present case management procedures used in this district permit adequate time or opportunity to bring a civil case to disposition?

1. Yes
2. No

35-

C. COSTS OF LITIGATION

This section seeks information generally about the costs of litigating in this District. When answering these questions, please take into account only activity in direct preparation for or occurring subsequent to filing the case in U.S. District Court and only through the time of final disposition of the district court proceedings. Do not take into account activity related to state court or administrative proceedings, settlement efforts that took place prior to federal court filing, or appellate litigation.

7. If possible to generalize, approximately how many hours are spent on a typical case by attorneys representing your client?
_____ hours

36-

8. What attorney fee arrangements do you typically use (more than one may be circled)?

A. Contingent fee 37-
B. Hourly fee 38-
C. Salaried attorney 39-
D. Set fee 40-
E. Hourly fee with maximum 41-
F. Other. Please specify: _____ 42-

9. Approximately what percentage of both the total litigation costs for your client are accounted for by attorneys' fees?
_____% 43-

10. In general, what is the approximate portion of both the total litigation costs and time that may be attributed to each of the following activities?

ACTIVITY	COSTS	TIME		
Preliminary investigation of the case, drafting complaint, or answer	_____%	_____%	44-	45-
Discovery, including motions related to discovery	_____%	_____%	46-	47-

Other motions (e.g., summary judgment, motions to dismiss, TRO)	_____%	_____%	48-	49-
Negotiations for settlement or other stipulated disposition	_____%	_____%	50-	51-
Status conferences, scheduling conferences or hearings, final pre-trial conferences, and other case management related events	_____%	_____%	52-	53-
Trial	_____%	_____%	54-	55-
Other (please specify) _____	_____%	_____%	56-	57-
Totals:	100%	100%		

11. To what extent are you generally concerned about possible consequences beyond the monetary or other specific relief sought in a specific case, such as possible future litigation based on similar claims or the possibility of a legal precedent of significant consequence for your client? Please circle <u>one</u> answer.

1. Such consequences are usually of dominant concern to my client. 58-
2. Such consequences are usually of some concern to my client.
3. Such consequences are usually of little or no concern to my client.
4. I'm not sure.

12. Are the fees and costs incurred to litigate cases in this District generally (circle <u>one</u> answer):

1. Much too high 59-
2. Slightly high
3. About right
4. Slightly low
5. Much too low
6. I can't say

13. If you believe the costs of litigation in this District are high, which of the following, if any, are significant causes of excess costs? Please circle <u>all</u> that apply.

A. Excessive or inapposite case management by the court 60-
B. Inadequate case management by the court 61-

C. Actions by counsel or parties 62-
D. Excessive discovery 63-
E. Factors related neither to the court's case management nor to actions by counsel or parties (e.g., the demands of the court's criminal caseload or mistaken legal decisions by the court) 64-
F. Others (please specify) 65-

14. If you believe costs associated with civil litigation in this district are generally too high, what suggestions or comments do you have for reducing the costs? 66-
67-
68-

D. GENERAL COMMENTS

15. Are you the (attorney for or) plaintiff, defendant, or third party in cases in this District (circle one answer for all that apply)?

	PLAINTIFF	DEFENDANT	THIRD-PARTY	
Always	1	1	1	69- 70- 71-
Often	2	2	2	
Sometimes	3	3	3	
Never	4	4	4	

16. Has the court used or encouraged arbitration, mediation, summary trial, or other forms of alternative dispute resolution in cases in which you have been involved in this District?
1. Yes
2. No 72-

If yes, what type of alternative dispute resolution was used or encouraged? 73-
74-

If no, do you feel that some method of alternative dispute resolution should have been used or encouraged:

A. By the attorneys?
1. Yes 2. No 75-

B. By the Court?
1. Yes 2. No 76-

17. Please use the space below (and on the back of this page, if you wish) for any additional comments you would like to make about management of litigation by the court in this District in general.

Thank you for your time and cooperation. Please return in the enclosed, self-addressed, stamped envelope to:

Civil Justice Reform Act Advisory Group
For the Eastern District of Louisiana
c/o Clerk of Court
500 Camp Street
New Orleans, Louisiana 70130.

If you have any questions, please call any member of the Advisory Group with whom you may be acquainted.

CIVIL JUSTICE REFORM ACT ADVISORY GROUP
FOR THE EASTERN DISTRICT OF LOUISIANA

INTERVIEW OUTLINE FOR DISTRICT COURT JUDGES

A. Civil Case Processing

1. Time Limits

a. What is your practice regarding monitoring service of process (i.e., call dockets, Rule 4(j) orders, etc.)?

b. What is your practice regarding extensions of time to respond to complaints, motions, or discovery?

c. What procedures have you found most effective in enforcing time limits?

2. Preliminary Scheduling

a. Do you hold Rule 16 preliminary conferences or does a magistrate, deputy clerk, or some other person conduct such conferences?

b. What is the format of your conference?

c. Do you use the court's standard scheduling order?

d. What is your usual approach to scheduling?

e. Do you find the conferences effective? If so, why or why not?

f. Describe your use of magistrate judges or other court personnel in your conferences.

3. Discovery Procedures

a. What is the time range you usually set cut-off dates for discovery?

b. Describe your procedures and practices regarding controlling the scope and volume of discovery.

c. Do you use a special Rule 26(f) discovery conference? Under what circumstances? If so, describe the scope of the conference.

d. Describe your use of magistrate judges for resolving discovery disputes.

4. Motion Practice

a. Describe your practice regarding oral argument.

b. What is your criteria for granting oral argument?

c. Describe your procedure for monitoring the filing of motions, responses, and briefs.

d. Do you use proposed orders from attorneys?

e. What is your opinion of present motion day practice?

f. Do you make oral rulings on motions? If so, describe frequency, type of case, effectiveness, etc.

g. Describe your internal policies for handling motions which are taken under advisement (i.e., priority of ruling, policies for written opinions; policies regarding published opinions).

5. Final Pre-Trial Conferences

a. Describe your procedures regarding final pre-trial conferences.

b. Do you send out the court's standard pre-trial conference notice? Do you make any changes in that standard notice?

c. Do you bifurcate trials and, if so, under what conditions?

d. Describe your role in exploring settlement possibilities.

6. Trial

a. Describe your method for scheduling trials (i.e., date certain, trailing, etc.).

b. Describe procedures you have found to be most effective in scheduling and conducting trials.

c. What is your approach to considering parties' motions to continue trials?

d. What in your experience are the principal reasons for trial continuance?

7. Alternative Dispute Resolution

   a. What are your opinions of the effectiveness of alternative forms of dispute resolution?

   b. Have you ever used any forms of alternative dispute resolution, and if so, what forms?

   c. Do you encourage the use of alternative dispute resolution in your court?

   d. How would you envision a permanent alternative dispute resolution system working within the Court?

8. Impact of Criminal Caseload

   a. How do criminal cases impact the processing of civil cases?

   b. What can the U.S. Attorney or the Federal Public Defender do, if anything, to expedite the handling of criminal cases?

9. General Comments

   a. Do you think civil cases take too long in this District? If so, are there certain types of cases which take longer than others?

   b. Do you think it costs too much to litigate civil cases in this District? If so, what can be done to decrease the costs of litigation?

   c. What, in your opinion, is the most effective tool or process to expedite civil cases.

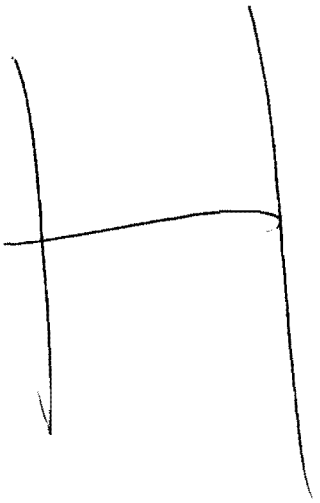
   d. What difficulties have you encountered in moving your civil case docket?

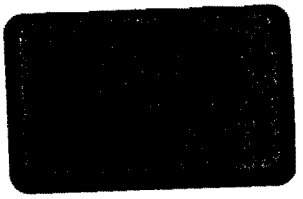
   e. What particular categories of cases or types of legislation, if any, cause more consumption of time or delay in your calendar than others?

   f. Do you discern any particular trends in the type or frequency of cases being filed and processed in our District?

   g. What other recommendations or suggestions do you have for addressing the cost or delay of civil cases?

h. Should the increased use of magistrate judges be encouraged or fostered in our District and, if so, how?





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A STATISTICAL PROFILE OF THE EASTERN DISTRICT OF LOUISIANA

August 1992

PROFILE OF THE EASTERN DISTRICT OF LOUISIANA

Civil Cases

Thirty eight percent of the civil cases in LED in 1990 were torts cases compared to 20% nationally. LED had almost twice the percentage of torts cases as was found in the United States as a whole.

In second place both in LED and the United States was prisoner petitions constituting almost 23% of the cases in LED compared to nearly 20% in the country.

In third place was contract cases at nearly 17% in LED as opposed to 16% in the United States.

In all other types of civil cases as shown in Table I, LED had a lower percentage of the total than was found with each one in the United States as a whole.

Criminal Cases

Thirty four percent of the criminal cases in LED were fraud cases compared to approximately 21% in the United States.

In second place in LED was narcotics cases at 17% as opposed to 22% in the United States followed in third place by all other criminal at 11%, slightly greater than the 9% found in the United States.

Filings per Judgeship

In 1990, in LED there were 407 filings per judgeship compared to 437 in the United States as a whole as shown in Table II. LED's filings per judgeship were down considerably from 1989

and way down from the 525 figure in 1987 which was by far the highest for the years 1985 through 1990.

TABLE I

Louisiana Eastern District

Civil	1990	
	LED%	U.S.%
H-Torts	38.23	20.00
C-Prisoner Petitions	22.65	19.56
G-Contracts	16.89	16.13
J-Civil Rights	5.28	8.62
L-All other Civil	4.50	9.59
E-Real Property	3.14	4.36
D-Forfeitures and Penalties and Tax Suits	2.63	4.93
F-Labor Suits	2.59	6.35
B-Enforcement of Judgments	1.76	4.99
A-Social Security	1.64	3.41
I-Copyright,Patent, and Trademarks	.59	2.61
K-Antitrust	.04	.21

Criminal		
	LED%	U.S.%
I-Fraud	34.21	20.88
G-Narcotics	17.34	22.31
L-All other Criminal	10.84	9.20
E-Burglary & Larceny	7.22	5.61
F-Marihuana	6.98	10.57
B-Embezzlement	6.26	5.10
C-Weapons and firearms	6.26	7.96
H-Forgery	3.61	3.95
K-Robbery	2.89	4.25
A-Immigration	2.16	6.72
D-Escape	1.68	2.39
J-Homicide and Assault	.48	1.79

TABLE II

ACTIONS PER JUDGESHIP

Filings per Judgeship

	U.S.90	LED90	89	88	87	86	85
Total	437	407	493	479	525	502	493
Civil	379	374	463	450	491	475	466
Criminal	58	33	30	29	34	27	27
% Criminal	13.27	8.10	6.08	6.05	6.47	5.37	5.47

Between 1985 and 1990
17% less total cases
22% increase in criminal
20% decrease in civil

Pending Cases						
474	316	388	379	430	434	465
Weighted Filings						
448	354	436	417	461	454	434
Terminations						
423	454	474	530	528	534	594
Trials Completed						
36	31	33	36	34	38	40

Total Number of Terminations and Pending Cases by Percentage Pending

90	89	88	87	86	85
10000	11331	11819	12459	12574	13764
41.02	44.49	41.71	44.90	44.80	43.92

-3.47 for 89 through 90

Between 1985 and 1990
19% drop in weighted filings
1/3 drop in pending cases
24% less terminations
22% less trials completed

Source: 1990 Federal Court Management Statistics

Civil filings per judgeship were about the same in LED as in the United States.

LED's 1990 figure of 374 was far below the 463 civil cases found in 1989, let alone the 491 cases filed in 1987 in the District.

The criminal case load per judgeship was 33 compared to a national average of 58. LED's caseload has remained fairly constant since 1987. However, the percent of criminal cases has increased significantly since the mid 1980's rising to 8.1 percent of the total in 1990.

There was a 22% increase in criminal cases and a 20% decrease in civil cases in the Eastern District between 1985 and 1990.

Between 1985 and the end of 1990 in the District, there was a 19% drop in weighted filings, a one third drop in pending cases, 24% less terminations, and 22% less trials completed. The LED has been gaining ground in disposing of cases. Pending cases as a percentage of combined terminations and pending cases was 41.02% at the end of 1990 compared to 44.49% in 1989.

The 41% figure was not only considerably lower than the 1989 figures but lower than any of the figures from 1985.

Time

The filing to disposition of criminal cases in the Eastern District has been increasing from an average of 3.6 months in 1985 to 4.8 months in 1990 compared to 5.3 months for the United States as seen in Table III.

TABLE III

	U.S.	LED 90	89	88	87	86	85
Median Times/Months							
-Filing to Disposition							
Criminal	5.3	4.8	4.4	3.6	3.6	3.6	3.6
Civil	9	8	9	9	10	10	12
-Issue to Trial (Civil Only)							
Civil	14	11	11	11	13	13	15
Other							
-Number & % Civil Cases over 3 years old							
Civil	25,207	95	93	110	183	216	259
	10.4%	2.5%	2.0%	2.4%	3.4%	4.0%	4.4%
-Triable Defendants in Pending Criminal Cases Number & %							
Criminal	20,544	109	134	136	116	110	115
	43.6%	24.3%	31.8%	35.6	35.9%	34.8%	34.7%
Jurors							
-Avg. Present for Jury Selection	35.84%	21.44%	19.52%	16.47%	17.96%	20.35%	18.00%
-% Not Selected or Challenged	34.2%	18.6%	12.1%	12.0%	11.4%	20.2%	12.3%

The time taken for civil cases has been decreasing reaching an average of eight months in 1990 compared to nine months for the United States and twelve months for the LED in 1985.

In civil cases from issue to trial the average time taken in LED was eleven months compared to fourteen months in the United States.

The time from issue to trial in civil cases has dropped considerably from the fifteen months in 1985 to eleven months in 1990.

Only 2.5% of the civil cases in the LED were over three years old in 1990 compared to 4.4% in 1985, and 10.4% in the

United States in 1990.

In criminal felony cases, 24.3% were triable defendants in 1990, in other words defendants who were available for plea or trial on June 30th out of all defendants in pending felony cases. This was a considerably lower percentage than found in the earlier years studied and way below the 43.6% found in the United States.

Numerical Standing of Louisiana Eastern District with U.S. and Fifth Circuit in 1990

As Table IV indicates, the LED ranked first within the Fifth Circuit in the median time from issue to trial in civil cases and the median time from filing to disposition of civil cases.

LED ranked second in the Fifth Circuit in the number of civil cases over three years old.

LED ranked twelfth out of all U.S. districts in median time from issue to trial in civil cases and in the number of civil cases over three years of age.

The LED was near the bottom in criminal filings ranking eighty fourth in the country but forty fourth in civil filings.

The number of cases pending per judge was not large in comparison with the other districts ranking seventy fifth.

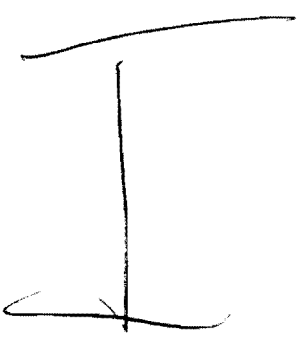
Total filings were not increasing in comparison with the other districts either ranking eighty fourth.

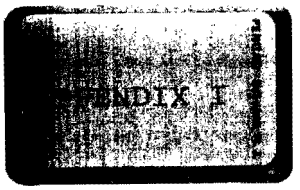
Pending cases per judgeship were low in a District where total filings have been declining.

TABLE IV

Numerical Standing of Louisiana Eastern District within U.S. and 5th Circuit in 1990

	Rank U.S. (94 Courts)	Rank 5th Circuit
Median Time from Issue to Trial/Months Civil Only	12	1
Percent of Civil Cases Over 3 years old	12	2
Median Time from filing to disposition Civil	15	1
Median Time from filing to disposition Criminal	23	3
Terminations per judgeship	35	8
Civil Filings	44	8
% Change in Total Filings 1990 over earlier yrs	51	7
Total Filings	58	9
Weighted Filings per judgeship	69	9
Trials Completed per judgeship	58	7
Pending Cases per judgeship	75	9
Criminal Filings	84	7
Percent change in Total Filings 1990 over 1989	84	9





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REPORT TO THE CIVIL JUSTICE REFORM ACT ADVISORY GROUP FOR THE EASTERN DISTRICT OF LOUISIANA OF THE RESULTS OF A SURVEY SENT TO A SAMPLE OF LITIGANTS AND ATTORNEYS OF RECENTLY TERMINATED CASES IN THE DISTRICT

August 1992

PREFACE

In 1990, Congress enacted the Civil Justice Reform Act. This act requires each District Court to appoint an advisory committee to evaluate whether excessive costs and delays associated with civil litigation are a problem in the district, and if so to recommend ways they may be reduced.

The advisory committee for the Eastern District of Louisiana selected at random a representative group of recently terminated cases for examination. Questionnaires were sent to litigants and attorneys involved in these cases. In addition, there was a general questionnaire sent to selected attorneys.

This survey is based on the results of the returned questionnaires received between February and June 1992.

TABLE OF CONTENTS

I. CASE MANAGEMENT

Two thirds of the nine people who returned the general questionnaire said the level of case management in the Eastern District of Louisiana was either intensive or high with 56% choosing high and 11% intensive. In other words most respondents felt the level of case management was very significant in this district.

The respondents were given a list of several case management actions that might be taken by the court and asked whether those actions were generally taken in the Eastern District of Louisiana. Of the possible actions surveyed, the ones most frequently taken in this district according to Table I were the court ruling promptly on pre-trial motions and exerting firm control over the trials at 89% each.

Next came holding pre-trial activities to a firm schedule and having the initial or scheduling conference handled by a judge or magistrate at 78% each. However, 44% of the respondents in another response said the initial scheduling conference was handled by the clerk.

Two thirds of the respondents said the court usually sets an early and firm trial date in this district. Only 44% of the respondents thought the courts in the Eastern District set and

enforced limits on allowable discovery or set limits on the amount or scope of discovery.

A third of the respondents said the court facilitates settlement discussions but only 11% believe the courts narrow issues through conferences and no one stated the courts refer the cases to types of alternative dispute resolution such as mediation or arbitration.

Table I Case Management Actions Taken by Court

	%Taken	%NotTaken	%DK/NA
Rule promptly on pre-trial motion	89	11	
Exert firm control over trial	89	11	
Hold pre-trial activities to firm schedule	78	22	
InitialConferenceHandledByClerk	78	11	11
Set early & firm trial date	67	22	11
Set limits on discovery	44	56	
Set and enforce limits on amt and scope of discovery	44	56	
Initial conference handled by Judge or magistrate	44	56	
FacilitateSettlementDiscussions	33	67	
Narrow issues through conference	11	89	
ADR	0	100	

II. TIMELINESS OF LITIGATION

Two thirds of the respondents believe the time required from filing to disposition of cases in the Eastern District was reasonable while 11% felt the time spent was too long but 22% felt it was too short.

Two respondents who said when cases take longer to reach disposition than they should believe the cause of the problem was dilatory actions by counsel while dilatory actions by litigants, the courts failure to rule promptly, backlog of other cases, and dilatory actions by the court each received one mention as being the culprit.

On the other hand, inadequate time for proper discovery and pre-trial deadlines being difficult to meet were responses given by respondents believing insufficient time was allowed for the disposition of cases.

Eighty nine percent of the respondents did not believe delay in disposing of civil cases was generally a problem in this district.

To cut delay to the extent that it does exist, respondents advocated enforcing discovery rules, using summary judgment to narrow issues, and to quit ducking trials.

Two thirds of the respondents said present case management

procedures used in this district permit adequate time or opportunity to bring a civil case to disposition. Delay does not seem to be a serious problem in this district.

III. COST OF LITIGATION

Approximate Hours Spent on a Typical Case by Attorneys

Thirty three percent of the respondents spent an average of 250-499 hours on a case while 22% mentioned 100-249 hours, and another 11% mentioned 500-749 hours on a typical case.

Fee Arrangements

Seventy eight percent of the respondents used the hourly fee arrangement while 22% used a contingent fee plan and 11% were salaried attorneys.

Percentage of Total Litigation Costs Accounted for by Attorneys Fees

A third of the respondents said 90% or more of the total litigation costs of their clients were accounted for by attorneys fees while 22% mentioned 75% to 89%, 11% said 50% to 74%, and 22% said 25% to 49% of the costs were attorneys fees.

Fees Too High?

Fifty six percent of the respondents said the fees incurred to litigate in this district were generally about right while 22% said they were much too high and 11% said fees were slightly high for a total of 33%. No one thought fees were low but 11% said fees were slightly low.

Thirty three percent of the respondents who said litigation

costs were too high gave as their reason actions taken by counsel or parties to the case. Twenty two percent blamed excessive discovery was the problem while 11% each mentioned excessive or inapposite case management by the court, inadequate case management by the court or the high cost of experts fees or court reporters charges.

The respondents were also asked in an open ended question for suggestions on how to reduce costs. One suggested having non binding mediation, while another said get rid of the Notice Pleadings concept.

One said allow counsel to participate in the decision about when the case is ready to be set for trial.

Another respondent said experts fees should be fixed by statutory schedule or or by the court. One respondent wanted to place limits on allowable discovery and strictly adhere to them.

Approximate portion of total litigation costs and time attributed to each of the following activities

Discovery as Table II indicates is where the money is. Forty four percent of the respondents said discovery alone took up 50% or more of total litigation costs, two thirds said more than 40%, while no one said it accounted for less than 20% of the total cost.

Only one respondent said trials accounted for more than 50% of the litigation costs.

Two thirds of the respondents said trial costs accounted for more than 30% of their total litigation costs, second highest

behind discovery. Nothing else measured accounted for much of the dollars spent by litigants.

Table II

% of Total Litigation Costs and Time by Category

	70+		50-69		30-49		10-29		Less Than 10		DK	
	C	T	C	T	C	T	C	T	C	T	C	T
PrelimInvesti							33	55	55	44	11	
Discovery	11	11	33	33	22	33	22	22			11	
OtherMotions							44	56	44	44	11	
NegotiaSettlmnt							33	44	55	36	11	
StatueConfer,Etc.							22	33	66	67	11	
Trial	11				22	11	33	44	22	44	11	
Other						11	11	11	78	78	11	

IV. ARBITRATION

Eighty nine percent of the respondents replied the court did not encourage arbitration, mediation, summary trial, or other forms of alternative dispute resolution while one person said the court did. In that instance, the court used a summary trial.

Fifty six percent of the respondents said some method of alternative dispute resolution should have been used or encouraged by the attorneys in cases in which they were involved while 33% disagreed. Fifty six percent also stated the court should have used or encouraged some alternative dispute resolution method but 33% disagreed.

V. CONCERNED ABOUT CASE OR THE FUTURE

Only one respondent was very concerned about the possible consequences beyond the monetary or other specific relief sought in a specific case such as possible future litigation based on similar claims or the possibility of a legal precedent of significant consequence for their client.

Forty four percent expressed some concern about the future consequences while 44% had little or no concern.

The attorneys were interested in the case, not in the body of law.

VI. ATTORNEY FOR ?

The respondents were asked if they were always, often, sometimes, or never the attorney for the plaintiff, the defendant, or the third party. Eleven percent said they were always the attorney for the plaintiff, 11% were always the attorney for the defendant, while no one said they were always the attorney for the third party.

Seventy eight percent responded they were sometimes the attorney for the plaintiff while 78% said they were often the attorney for the defendant. Two thirds were either often or sometimes an attorney for the third party. In other words, the respondents were more likely to be a defendants attorney than a plaintiff or third party attorney.

I. LITIGANTS AND TYPES OF CASES

Ten percent of the questionnaires sent to attorneys for transmission to litigants were completed.

Sixty two percent of the seventy four respondents in the litigants survey were defendants, 32% were plaintiffs and 5% were third party participants. Forty two percent of the cases involved torts while 30% involved miscellaneous statutory acts and 28% contracts or written instruments as shown in Table I.

Most of the tort and contract respondents in the survey were defendants while nearly three out of five of the miscellaneous statutory cases involved plaintiffs. Half or more of the defendant and third party cases involved torts compared to 42% of the plaintiff cases.

As Table II shows, marine personal injury cases and other tort cases tied at 16% each for first place by specific category. Next was all other cases at 14% followed by insurance contract cases at 11%.

TABLE I

		Type		
Sample		Contract	Torts	Miscellaneous
Defendant	62	62	81	36
Plaintiff	32	33	13	59
Third Party	5	5	6	5

		Sample		
Type		Plaintiff	Defendant	ThirdParty
Torts	42	42	55	50
Contracts	28	28	28	25
Miscellaneous Statutory Actions	30	30	17	25

TABLE II

Total and Specific Types by Specific Categories

	Total Sample			Type		
SpecificCatego	Total	Plain	Defend	3rdPrty	Contract	Torts	Misc
MarinePerInjury	16	17	15	25	0	39	0
OtherTorts	16	0	26	0	0	39	0
All other	14	33	4	0	0	0	45
Ins.Contracts	11	13	9	25	38	0	0
PotentialComplx	8	8	7	25	0	0	27
NegotiblInstru	7	13	4	0	24	0	0
MarineContrct	5	0	9	0	19	0	0
PrdctLibility	5	0	7	25	0	13	0
MotorVehclePersIn	4	0	7	0	0	10	0
OtherCivilRts	4	4	4	0	0	0	14
Foreclosure	3	4	2	0	10	0	0
OtherContracts	3	0	4	0	10	0	0
Labor	3	8	0	0	0	0	9
Civil Rights	1	0	2	0	0	0	5

II. TIME TAKEN TO RESOLVE MATTER

Appropriateness of Time to Resolve Matter

Nearly half the respondents, 47%, thought the time taken to resolve the matter from the filing of the suit to the final disposition in the trial court was about right. No respondent thought the time was too short while 45% said it took too long with 30% believing it took much too long to reach final disposition.

There was not much difference between plaintiffs, defendants, and third parties on the appropriateness of the time taken to resolve the dispute. People involved in tort cases were much more likely to feel the time taken was about right than were people involved in contracts or miscellaneous statutory suits.

Fifty nine percent of the respondents who felt the time taken was much too long also felt the costs incurred in the case were much too high. Another 14% felt costs were slightly too high for a total of 73% of those who said the case took too long believing costs were too high.

Only 18% of those who felt the time taken was about right indicated the costs were either much or slightly too high.

Fifty five percent of the respondents who said the case took much too long estimated the amount of money at stake in their

case at $250,000 or more compared to 35% of those who replied about right having $250,000 or more at stake.

Twenty three percent of those who felt it took much too long for the case to reach final disposition paid $100,000 or more in litigation costs. Nineteen percent of that group had total litigation costs of under $10,000.

Nine percent of the respondents who felt the time was about right spent $100,000 or more in litigation costs compared to 40% of that group having total litigation costs of less than $10,000.

Actions that could have been taken to resolve cases more quickly

The litigants who believed their cases took too long were given a list of actions that might have taken to resolve their case more quickly and asked which one or ones they believed should have been taken. The most frequently picked possible action was set and enforce the limits on allowable discovery followed closely by refer the case to alternative dispute resolution (such as mediation, summary trial, or arbitration), set an early and firm trial date, conduct or facilitate settlement discussions, or hold pre-trial activities to a firm schedule. No other reason received a significant number of mentions.

III. FEES AND COSTS

Fee Arrangement

The litigants were asked what type of fee arrangement they had with their attorney. Seventy seven percent of the respondents had an hourly fee arrangement, 10% a contingency fee arrangement and 10% was a salaried in house attorney. Only one percent had a set fee.

Fifty four percent of the plaintiffs had an hourly fee contract while 29% had a contingency arrangement. Ninety one percent of the defendants had an hourly fee arrangement.

Third party litigants split 50% for hourly fee to 50% for salaried in house attorney.

One hundred percent of the contract litigation was done by hourly fee compared to 74% of the tort cases and 59% of the miscellaneous statutory cases.

Thirteen percent of the tort cases were done by salaried in house attorneys, 23% of the miscellanoues statutory cases on a contingency basis and 14% were performed by salaried in house attorneys.

One hundred percent of the cases where the money at stake was $3,000,000 or more were handled on an hourly fee basis as were 70% of those between $1,000,000 and $3,000,000 and 92% of

those where between $10,000 and $30,000 was at stake.

Eighty percent or more of the cases where the total cost of litigation was over $10,000 were handled by the hourly fee method.

Arrangement results in reasonable fees

Litigants were asked if in their opinion the arrangement they had with their attorney resulted in reasonable fees. Sixty eight percent of the litigants agreed while 15% felt they were not reasonable.

One hundred percent of the third party cases, 72% of the defendants and 54% of the plaintiffs were comfortable with the fees.

Eighty one percent of the litigants in tort cases, 71% in contract cases, and 46% of those in miscellaneous statutory cases felt the fee arrangement was reasonable.

Reasonableness of costs

The litigants were asked if the costs incurred by them on their case were too high, about right, or too low. Sixty one percent felt the costs were about right. Nobody said the fees were too low while 39% replied too high, of which 24% said they were much too high. Litigants were more likely to believe total costs were too high than were attorneys fees.

Half the third party litigants, 29% of the plaintiffs, and 20% of the defendants said the costs were much too high, as did 33% of those involved in contract disputes, 32% in miscellaneous statutory cases, and 13% in tort cases.

Fifty percent of the respondents who were involved in a case where the amount at stake was between $1,000,000 and $3,000,000 felt the legal costs were much too high as did 38% of those who were involved in cases where the stakes were $3,000,000 and up.

Hardly anybody in cases where the stakes were less than a quarter of a million dollars said the costs were much too high.

If believe the cost of litigation was too high, what actions should your attorney or the court have taken to reduce the costs

Litigants were asked if they thought the cost of litigation was too high, what actions should their attorney or the court have taken to reduce costs in the case.

The most frequently given comments were set and enforce limits on allowable discovery, set an early and firm trial date, conduct or facilitate settlement discussions, refer the case to ADR, rule promptly on pre-trial motions, narrow issues through conferences or other methods, or hold pre-trial activities to a firm schedule. In other words, litigants picked virtually the same reasons for lowering costs as they did in answering how the case could have been resolved faster. Time is money.

Money at stake in the case

Twenty seven percent of the respondents' cases involved less than $50,000. Half the cases involved more than $100,000 while a quarter of the cases saw $1,000,000 or more at stake. Eighteen percent of the respondents replied they didn't know or left the answer blank.

Forty two percent of the plaintiffs cases involved a million

dollars or more compared to 15% of the defendants cases and 25% of the third party cases.

Seventy five percent of the third party cases involved less than $50,000 compared to 24% of the defendants cases and 16% of the plaintiff cases.

One million dollars or more was at stake in one third of the contract cases and miscellaneous statutory cases but in only 13% of the torts cases.

Total Cost of Litigation

One third of the respondents had total litigation costs of less than $10,000, another 19% had costs between $10,000 and $29,000 for a total of 52% having litigation costs below $30,000. Sixteen percent put their litigation costs at $100,000 or more. Twenty one percent of the plaintiffs had litigation costs of $100,000 or more while 58% had litigation costs of less than $60,000.

Fifty percent of the defendants costs were less than $30,000 compared to 15% being $100,000 or more. No third party cases cost more than $30,000.

Sixty two percent of the contract cases had total litigation costs of less than $30,000 compared to 42% of the torts cases and 55% of the miscellaneous statutory cases while 24% of the contract cases, 13% of the torts and 14% of the miscellaneous statutory cases had total litigation costs of $100,000 or more.

Comparing the amount of money at stake in a case with the total cost of litigation revealed one case involving less than

$10,000 having total litigation costs of $100,000 or more. In another case where the money at stake was between $10,000 and $30,000, legal fees were between $30,000 and $60,000.

One hundred percent of the cases where $50,000 to $100,000 was at stake had legal fees of less than $30,000 as did 72% of those where the amount of money involved was between $100,000 and a quarter of a million dollars.

Except for the case mentioned above, no one had legal fees of $100,000 or more unless the case involved $500,000 or more.

Comparing the total cost of litigation figures with the question concerning legal fees showed no one involved in a case where the total litigation costs were between $60,000 and $100,000 thought the legal fees were about right. Only 20% of those involved in cases having legal fees between $30,000 and $60,000 and 25% of those involved in cases where the litigation costs were $100,000 or more believed the legal fees in the cases were about right.

Litigation costs by category

The respondents were asked to list the total costs spent on their case by individual categories. Unfortunately between 42% and 47% of the respondents did not do so.

As expected, attorneys' fees took up the lion's share of the costs as shown in Table III.

Only 12% of the cases had attorneys costs of less than $1,000 while 45% had attorney's fees of $1,000 or more including 12% having legal fees of $100,000 or more.

Table III

Total Cost of Litigation by Category

	Cost						
	None	$1-999	1000-4999	5-19	20-99	100+	DK/NA
Attorney's Fees	8	4	10	15	8	12	44
Expenses	22	8	12	8	3	3	45
Consultants	51	3	0	1	1	1	42
Expert Witnesses	50	0	3	0	4	1	42
Other	42	7	3	1	0	1	47

Twenty six percent of the respondents had expenses such as postage, photocopying and travel of $1,000 or more. Three percent of the cases had $100,000 or more of this type of expense.

Fifty one percent of the respondents spent no money on consultants with 3% spending over $1,000.

Fifty percent of the respondents reported spending no money on expert witnesses while 5% said $20,000 or more was spent on such witnesses.

This group of litigants used very few consultants or expert witnesses in their cases.

Five percent of the litigants spent $1,000 or more on other expenses such as settlement costs, filing fees, and court costs but half spent nothing.

Suggestions regarding the time and cost of litigation

Ten percent of the litigants wanted to establish and enforce standards for discovery as a method of controlling costs and

time. Needless motions, unnecessary actions by attorneys and the need for additional support for ADR were each mentioned by three percent of the respondents as ways to control time and costs.

IV. ALTERNATIVE DISPUTE RESOLUTIONS

Use of ADR

Eighty eight percent of the respondents said arbitration, summary trial, mediation or any other form of alternative dispute resolution was not used in their particular case while 10% said ADR was used in their case and 2% left the question blank.

Eight percent of the plaintiff cases and 11% of the defendant cases but no third party case used ADR. Eighteen percent of the miscellaneous statutory cases used ADR, as did 10% of the contract cases but ADR was used in only one tort case.

Fourteen percent of the cases which the litigants said took much too long to conclude and 11% of the cases that took about the right amount of time used some method of ADR.

Forty three percent of the cases using some form of ADR had litigation costs of less than $10,000, 29% had total litigation costs of $100,000 or more and 14% had litigation costs of between $60,000 and $100,000.

Forty three percent of those using ADR stated their attorneys costs were much too high compared to 23% of those not using ADR believing their costs were much too high.

Where ADR was used, the litigants were asked to describe the method used. Forty three percent of this small group mentioned arbitration or summary judgment while 29% said the case was

settled out of court

In 12% of the cases where ADR was not used the litigant's attorney and the litigant discussed the possibility of using ADR.

Fourteen percent of the plaintiffs and 13% of the defendants but no third parties discussed the use of ADR.

The possible use of ADR among those not using it was discussed in 21% of the contract cases, 11% of the tort cases, and 6% of the miscellaneous statutory cases.

In only 7% of the cases where ADR was not used but where the litigants felt costs were much too high was the possibility of using ADR ever discussed. Thirteen percent of those in this group who felt legal costs were slightly too high, and 14% who said costs were about right discussed the possible use of ADR.

In only 6% of the cases where the litigant said the case took much too long to reach a conclusion was the possibility of using ADR discussed between the attorney and the litigant except of course, in cases where ADR was used.

Discussing using ADR rose to 13% among litigants who felt the time involved was about right and to 20% in those cases where the litigants felt the time was slightly too long.

In 30% of the cases where total litigation costs were $100,000 or more and ADR was not used, the litigant and the attorney discussed the possible use of ADR but in only 8% of the cases involving litigation costs between $10,000 and $30,000, and 5% of the cases involving litigation costs between $1,000 and $10,000 was the possibility of using ADR discussed except in the

cases where it was actually used.

There was only one instance of the court discussing with the litigant the possibility of using ADR in a case where it was not used.

I. ATTORNEYS AND TYPES OF CASES

The attorneys were sent 639 questionnaires of which 215 were filled in for a return rate of 34%. Fifty four percent of the returned questionnaires were from defendant attorneys while 39% were from plaintiffs and 7% were from third party attorneys. Fifty two percent of the questionnaires involved tort cases, 27% contract, and 21% miscellaneous statutory actions as shown in Table I.

Table I

		Type		
Sample		Contract	Tort	Miscellaneous
Defendant	54	41	58	64
Plaintiff	39	46	37	36
Third Party	5	14	5	0

		Sample		
General Type		Plaintiff	Defendant	ThirdParty
Torts	52	49	55	43
Contracts	27	32	21	57
Miscel.	21	19	25	0

Sixty four percent of the miscellaneous statutory action questionnaires involved defendant attorneys compared to 58% of the tort cases and 41% of the contract cases.

Forty six percent of the contract cases involved plaintiff attorneys compared to 37% of the tort cases and 36% of the miscellaneous statutory actions.

Fifty five percent of the defendant attorneys cases involved torts as did 49% of the plaintiff attorneys and 43% of the third party attorneys.

By specific type of case, marine personal injury cases came out on top at 24%. Four points behind at 20% was other tort cases. Way behind those two were insurance contract cases and all other cases at 9% each as shown in Table II.

Next came negotiable instrument cases and marine contract cases at 7% and 6% respectively. In a three way tie for last place at 2% each were labor, civil rights/jobs, and foreclosure cases.

Table II

Specific Type by Total Sample and Types

	Total	Sample			Types		
SpecificType		Plai	Defen	3rd	Contr	Torts	Misc
MarinePerInjury	24	29	20	29	0	46	0
OtherTort	20	14	25	7	0	38	0
Insur.Cont	9	7	9	21	32	0	0
AllOther	9	7	11	0	0	0	42
Nego.Instru.	7	8	3	36	25	0	0
MarineCont.	6	5	7	0	22	0	0
ProdctLiab.	5	2	5	7	0	9	0
OtherCivilRts	4	4	5	0	0	0	20
OtherContrcts	4	8	1	0	14	0	0
MotorVehPerInj	4	4	4	0	0	7	0
PotentComplex	4	4	4	0	0	0	18
Labor	2	2	3	0	0	0	11
Civ.Rts/Jobs	2	2	2	0	0	0	9
Foreclosure	2	4	1	0	7	9	0

II. CASE MANAGEMENT

Case Management Procedures Permit Adequate Time to Bring a Civil Case to Disposition

Eighty nine percent of the attorney respondents said present case management procedures used in the Eastern District of Louisiana permit adequate time or opportunity to bring a civil case to disposition while 7% disagreed with the statement and 2% replied sometimes. Another 2% left the question unanswered.

Seven percent of both the plaintiff and defendant attorneys replied in the negative compared to 14% of the third party attorneys, however, this represented only two cases.

Sixty nine percent of both those who felt case management procedures provided adequate time and those who did not agreed the time elapsing from the filing to disposition of their case was reasonable.

Seventeen percent of those agreeing the procedures were adequate said it took too long for their case to reach final disposition. No one who felt case management procedures were not adequate, however, said it took too long while one attorney indicated that the time taken was too short in their case.

Level of Case Management

Seven percent of the cases were characterized as having

intensive case management while 22% had high case management for a total of 29% having either high or intensive case management.

Forty two percent had moderate case management while 7% had low case management, 10% minimal and 4% had none. In other words, 21% of the cases had little to no case management compared to 29% having a great deal of case management, and 42% having a moderate amount. There was not much difference between plaintiff, defendant, or third party cases on this question.

Tort cases were more likely to be moderately managed than were either contract or miscellaneous statutory cases while contract cases were more likely to have minimal case management than either of the other categories.

Miscellaneous statutory cases were more likely to have high or intensive case management than either torts or contract cases.

Sixty one percent of the cases where the respondents felt the costs were much too high were highly or intensively case managed compared to 22% where the attorneys thought the costs incurred were slightly high, and 29% where the respondents felt the costs were about right.

Case Management Actions Taken by Court

As Table III shows, 62% of the time the court acted to hold pre-trial actions to a firm schedule. No other management action was taken more often by the court.

In a tie for second place at 51% each was the court setting an early and firm trial date and ruling promptly on pre trial motions.

Table III

Case Management Actions Taken by Court by Type of Case

Action	Total	Plai	Def	3rd	Contr	Tort	Misc
HoldPreTriActtoFirmSched	62	62	62	64	59	68	51
Early Firm Trial Date	51	54	53	21	42	54	56
RulePrompton PreTrialMotion	51	58	46	43	48	54	47
InitialConfbyJudge/Magistrate	48	44	50	47	37	52	53
FacilitateSettlement	46	39	51	36	36	51	47
EnforceLimitsonAllowablDiscov	43	37	49	36	34	51	38
NarrowIssuesthroughConference	43	44	45	21	27	47	56
InitialConfbyClerk	39	27	42	21	51	35	31
ExertFirmControloverTrial	27	30	26	14	9	34	31
LimitonScope of Discovery	25	18	31	14	12	30	29
UseADR	5	7	3	7	9	4	4
Other	4	6	3	0	5	2	7

Next came the intial trial conference being held by a judge or magistrate followed by the court trying to facilitate settlement.

The actions least taken by the court were exerting firm control over the trial (27%), limiting the scope of discovery (25%), and using ADR (5%). Exerting firm control over the trial and limiting the scope of discovery were seldom taken in contract cases.

Comparing intensity of case management with case management actions taken shows that 88% of the time in intensively managed cases the court held pre-trial actions to a firm schedule and

tried to facilitate settlement of the case.

Three fourths of the time, the court in intensively managed cases set an early and firm trial date, ruled promptly on pre-trial motions and enforced limits on allowable discovery as shown in Table IV.

Table IV

Actions Taken by Court by Level of Case Management

Action	Total	Intens	High	Mod	Low
HoldPreTriActtoFirmSched	62	88	83	74	19
Early/FirmTrialDate	51	75	62	58	44
RulePromptonPreTrialMoti	51	75	55	49	44
IniConf by Judge/Magis	48	69	62	50	31
FacilitateSettlement	46	88	64	43	25
Enfor/LimtAllowbleDiscov	43	75	62	46	19
NarrowIssuesthruConfer	43	69	55	48	25
InitialConferbyClerk	39	31	34	41	31
ExertFirmControlovrTrial	27	50	32	26	19
LimitsonScopeofDiscovery	25	63	26	26	19
UseADR	5	6	2	4	6
Other	4	6	4	0	0

In 69% of the intensively managed cases, the initial conference was held by a judge or a magistrate and the court tried to narrow the issues through conferences.

III. TIME AND RESOLVING THE MATTER

Is Delay a Problem?

Ninety percent of the respondents did not believe delay in disposing of civil cases in the Eastern District of Louisiana was generally a problem. Eight percent replied delay was a problem while 1% said not enough time was allowed to dispose of the case.

Ninety percent or more of the defendants and plaintiffs felt delay was not a problem compared to 71% of the third party group.

Sixty two percent of the attorneys who spent a thousand or more hours on their case felt delay was not generally a problem in the Eastern District.

In all other hourly divisions, 86% or more of the respondents felt delay was not generally a problem regarding civil cases.

When asked if delay was a problem, how should it be reduced, the most frequently given responses were limit discovery, enforce the limits, and set a firm and reasonable trial date.

Appropriateness of Time Taken to Resolve Matter

Seventy percent of the attorneys replied the time taken to resolve their case was reasonable while 15% said the time taken was too long and 2% said it was too short. Eleven percent indicated time was not important.

Plaintiffs and defendants gave about the same percentage response as the overall percentage but only 43% of the third party respondents believed the time was reasonable with 21% saying it took too long to resolve the case and 14% indicating time was not important.

There was little difference in the answers regarding contract, tort, or miscellaneous statutory cases on this question.

Forty seven percent of those who said delay was a problem in the Eastern District felt the time that elapsed in their case was reasonable.

Seventy six percent of the respondents who said the time duration of the case listed in their questionnaire was correct felt the time disposition of the case was reasonable as did 79% of those who felt the duration time given in the questionnaire was incorrect.

If a case took thirty months or less to reach disposition, attorneys were not upset. However, 31% of those involved in cases taken 31-50 months thought the time was too long as did 47% of those involved in cases taking 50 months or more.

Comparing amount of time spent by attorneys on the case with time elapsing from filing to disposition shows 29% of the attorneys who spent 500 or more hours on their case believing the case took too long.

Interestingly, 50% of the few attorneys who thought the time taken was too short spent one thousand or more hours on their

case.

Factors Contributing to Delay

The respondents were asked if they thought the case took longer than they believed reasonable to indicate what factors contributed to the delay.

The most frequently given responses were dilatory actions by counsel, backlog of other cases, inadequate case management by the judge, excessive discovery, dilatory actions by litigants and the courts failure to rule promptly.

The few respondents who felt the time allowed from filing to final disposition was too short gave as their reason, not enough time for proper discovery.

Accuracy of Time Records

The time listed in the questionnaire was correct according to 61% of the respondents but 18% said the listed time was inaccurate and was not the actual time taken from filing to final disposition in the trial court in their cases. Another 7% said the case had not yet reached final disposition while 9% said the duration was not important.

Two thirds of the plaintiff attorneys, 62% of the defendant attorneys, but only 14% of the third party attorneys agreed the duration listed was correct.

Thirty six percent of the third party respondents indicated the duration given was incorrect, 21% said the case had not yet reached final disposition, while 21% said the duration was not important.

Fourteen percent of the contract cases, 21% of the tort cases, and 18% of the miscellaneous statutory cases had incorrect time durations listed according to the respondents.

The biggest disagreement found between the time listed in the questionnaire and that given by the attorneys involved marine personal injury cases.

Indication by Records of Time Taken from Filing to Disposition in the Trial Court

Thirty five percent of the cases took twelve months or less with 9% taking six months or less according to the records. Another 19% took eighteen months or less. In other words, 54% of the cases took eighteen months or less. Another 22% took 19-30 months for a total of 76% of the cases being disposed of at the trial court level in thirty months or less.

Twenty three percent of the cases took thirty one months or more with 7% taking fifty months or longer.

Sixty four percent of the plaintiffs cases took eighteen months or less compared to 50% of the defendants, and 28% of the third party cases.

Fifty five percent of the contract cases, 51% of the torts cases, and 63% of the miscellaneous statutory actions took eighteen months or less to reach disposition.

Thirteen percent of the torts cases took fifty months or more compared to none of the contract cases and one miscellaneous statutory actions case.

Most cases taking fifty months or over were categorized as

other tort or product liability cases.

Comparing the length of time a case took to reach final disposition with whether the time given was correct showed 75% of those listed as taking between seven and twelve months as being correct for the highest percentage. The lowest percentage as Table IV shows, was the 40% found among cases listed as taking fifty months or more.

Table V

Time Is Correct by Length of Time Listed in Records

	RecordsTime						
Time	6mo or less	7-12	13-18	19-30	31-40	41-50	50+
Correct	55	75	68	60	42	50	40

IV. FEES AND COSTS

Money at Stake

Twenty five percent of the respondents cases involved less than $50,000 being at stake. Fifty five percent of the cases involved more than $100,000 while 22% had $1,000,000 or more at stake.

Forty three percent of the third party cases, 23% of the defendant cases, and 16% of the plaintiff cases involved one million dollars or more.

Thirty five percent of the plaintiffs cases, 21% of the defendant cases, and 7% of the third party actions involed less than fifty thousand dollars.

Thirty percent of the cases involving contracts, 15% of those involving torts, and 27% of the miscellaneous statutory cases had one million dollars or more at stake.

Twenty six percent of the contract cases involved less than $50,000 as did 20% of the tort cases, and 38% of the miscellaneous statutory cases.

Fee Arrangement

Sixty seven percent of the attorneys had an hourly fee arrangement with their client while 21% had a contingency fee, 10% were salaried attorneys and 1% had a set fee.

Eighty seven percent of the defendants, 86% of the third party lawyers but only 35% of the plaintiff lawyers had hourly fee arrangements with their clients.

Fifty four percent of the defendants had a contingency fee arrangement.

Eighty percent of the cases involving contracts, 64% of the miscellaneous statutory cases, and 60% of the torts cases had hourly fee arrangements.

Twenty eight percent of the tort cases involved a contingency fee agreement as did 16% of the miscellaneous statutory and 12% of the contract cases.

Sixty one percent of the attorneys in marine personal injury cases had an hourly fee arrangement while 33% had a contingency fee.

Nearly 60% or above of all cases where $50,000 or more was involved had an hourly fee arrangement. Eighty percent or more of the cases involving $1,000,000 and above had hourly fee arrangements with the attorneys.

Contingency fee arrangements were highest by monetary category in the $100,000 to $249,000 range at 36% and in the $500,000 to $999,999 category where 40% of the attorneys had such an agreement.

In 92% of the cases where attorneys spent one thousand or more hours working on a case, the hourly fee arrangement was in effect. Only one contingency fee case involved attorneys working one thousand or more hours on a case.

In 50% or more of all time categories an hourly fee arrangement was used.

Hours Spent by Attorneys Representing Your Client on This Case

In 25% of the cases involved in this survey, lawyers spent less than forty hours on the case. In 42% of the cases, attorneys spent less than 100 hours on the case.

Twenty seven percent of the cases had attorneys who spent between 100 and 449 hours on the case while in 12% of the cases attorneys put in more than 500 hours. Thirty nine percent of the cases took 100 hours or more of work.

Cases involving defendants, contracts, or miscellaneous statutory actions were more likely to involve 1,000 hours or more than plaintiff cases where only one attorney spent over 1,000 hours or third party or tort cases. Thirty six percent of the plaintiffs cases incurred less than 60 hours of legal work compared to 30% of the defendants cases and 35% of the third party cases.

Thirty four percent of the contract cases, 32% of the miscellaneous statutory cases, and 17% of the tort cases involved less than 40 hours of legal work.

In cases where the questionnaire indicated the case took 50 months or longer to conclude in only one instance did the respondent indicate 1,000 hours or more was spent on the case.

Indeed, in one case listed as having taken over 50 months, a respondent indicated less than 20 hours was spent on the case.

In 75% of the cases of less than six months duration,

respondents indicated less than 40 hours were spent on the case.

In only 23% of the cases where attorneys spent 1,000 or more hours did the case take 41 months or longer to reach final disposition in the trial court. Time and hours spent in a case don't necessarily go together.

Comparing opinion of costs in a case with how many hours attorneys worked on a case showed only 17% of the respondents who said the legal costs were much too high with less than 100 hours of attorneys fees. Thirty one percent of those having 1,000 or more hours spent on their case felt legal costs incurred were much too high and another 38% said the fees were slightly high for a total of 69%. People's opinions of high costs increases as time spent on case increases.

One million dollars or more was at stake in 100% of the cases where attorney respondents spent 1,000 hours or more on the case but in 8% of the cases involving less than twenty hours of legal work, $1,000,000 or more was at stake. In 60% of the cases involving $1-$3,000,000 250 or more hours were spent by attorney respondents on the case.

Sixty two percent of the cases involving $3,000,000 or more had attorney respondents working 250 or more hours on the case. Perhaps big money doesn't inevitably result in big legal fees.

Percentage of Total Litigation Costs Accounted for by Attorneys Fees

Half the attorney respondents said attorneys fees represented 75% or more of their total litigation costs with 29%

stating attorneys fees covered 90% or more of all litigation costs.

Attorneys fees in 64% of the third party cases accounted for more than 75% of their total costs, compared to 59% in defendant cases, and 36% in plaintiff cases. Attorneys fees accounting for 75% or more of total costs happened in 64% of the contract cases, 49% in miscellaneous statutory cases, and 44% in tort cases. Attorneys fees were not as big a factor in plaintiff cases as in other cases.

In cases where attorneys put in less than 100 hours of work, attorneys fees were much more likely to account for 90% or more of total litigation costs than they were in cases taking more than 100 hours of the attorneys time.

In only 31% of the cases where attorneys spent 1,000 or more hours on the case did attorneys fees account for 90% or more of litigation costs.

Reasonableness of Costs

The attorneys were asked if the costs incurred by them on their case were too high, about right, or too low.

Fifty nine percent of the respondents said the costs were about right while 21% said they were too high of which 8% was much too high. Ten percent of the respondents said the costs were too low of which 1% was much too low.

Sixty one percent of the plaintiffs, 59% of the defendants, and 50% of the third party lawyers said the costs were about right as did 63% of those involved in tort cases, 58% in contract

cases and 51% in miscellaneous statutory cases.

Sixty one percent of those who felt the fees were much too high indicated the case involved $1,000,000 or more compared to 22% feeling that way who were involved in cases where less than $50,000 was at issue.

Twenty two percent of the respondents who believed their legal costs were much too high or slightly high said disposing of civil cases was generally a problem in this district compared to only 5% having that opinion who felt legal costs were about right in their case.

If Costs of This Litigation Were High, What Were the Significant Causes of the Excess Costs

The most frequently circled answer in the questionnaire for why costs were high was actions by counsel or parties, followed by excessive discovery, inadaequate case management by the court, and factors related neither to the case's management nor to actions by counsel or parties.

If Believe Costs Associated with Civil Litigation Are Generally Too High, Suggestions for Reducing the Costs

The most frequently given suggestion to the open ended question was to limit and enforce the limits of discovery followed by firmer control over the case, setting firm trial dates, and reducing paper work.

Litigation Costs by Category

In a third of the cases, 50% or more of the total cost of litigation was discovery. In 10% of the cases, preliminary

investigation accounted for 50% or more of the total costs. None of the other categories had any significant percentages of money spent on them.

In 46% of the cases discovery accounted for 30% or more of the total cost of litigation as shown in Table VI. Only 16% of the time did discovery account for less than 10% of the total cost of litigation. Eliminate the cost of discovery and the legal profession could have a fire sale.

Table VI

% of Total Litigation Cost and Times by Category

	70+		50-69		30-49		10-29		Lessthan10		DK	
	C	T	C	T	C	T	C	T	C	T	C	T
Prelim Invest	5	6	5	5	7	9	27	38	29	26	27	16
Discovery	13	9	20	23	13	15	12	19	16	20	27	16
OtherMotions	2	5	2	3	5	8	23	30	43	38	26	17
Nego.settlmt	1	1	3	3	5	8	27	38	39	34	26	17
StatusConf,etc	1	1	0	0	3	4	20	31	50	49	26	17
Trial	0	0	1	1	5	3	6	9	66	72	22	14
Other	2	1	1	1	2	2	7	8	64	72	24	15

In only 6% of the cases did trial costs account for more than 30% of the litigation costs.

Thirty nine percent of the defendant attorneys spent half or more of their costs on discovery compared to 43% of the third party attorneys, and 23% of the plaintiffs. Forty one percent of the tort case costs were related to discovery compared to 30% of the cases involving contracts and 20% of the miscellaneous statutory cases.

V. CONCERNED ABOUT THE CASE OR THE FUTURE

Forty four percent of the attorney respondents said their clients had little or no concern about the possible consequences beyond the monetary or other specific relief sought in the specific case.

Seventeen percent of the respondents stated their clients dominant concern was about possible consequences of the decision such as future litigation based on similar claims or the possibility of a legal precedent of significant consequence. Twenty seven percent of the clients had some concern about the future.

Twenty one percent of both the defendants and third party attorneys said their client had a dominant concern compared to 12% of the plaintiffs attorneys.

Twenty seven percent of those involved in miscellaneous statutory actions were very much worried about the future compared to 14% of those involved in tort cases and 15% of those involved in contract cases.

Future possible consequences was the dominant concern of half of those involved in product liability or civil rights/job cases.

VI. COMPARISONS OF ATTORNEYS, LITIGANTS, AND GENERAL QUESTIONNAIRES RESPONSES WHERE APPLICABLE

Types of Cases

As Table VII indicates, questionnaires returned by litigants were eight points more likely to be defendants than those returned by attorneys. Litigants were far more likely to be tort or contract defendants than were the attorneys group.

Personal injury cases and "other torts" tied at 16% each for first place among the litigants by specific category while marine personal injury led at 24% followed by other tort cases at 20% among the attorneys group. Insurance contract cases and "all other" reversed each other for third and fourth place with both groups.

Case Management

Twenty nine percent of the attorneys said their cases either had high or intensive case management.

Two thirds of the nine respondents in the general category said the level of case management in the Eastern District was either intensive or high.

TABLE VII

	Contract		Tort		Miscell	
	Atny	Liti	Atny	Liti	Atny	Liti
Defendant	54	62	41	62	58	81	64	36
Plaintiff	39	32	46	33	37	13	36	59
Third Party	5	5	14	5	5	6	0	5

	Plaint		Defendt		3rdParty	
	Atny	Liti	Atny	Liti	Atny	Liti
Torts	52	42	49	42	55	55	43	50
Contracts	27	28	32	28	21	28	57	25
Miscellaneous	21	30	19	30	25	17	0	25

Case Management Actions Taken by Court

Comparing the attorney respondents with the general respondents showed considerable difference between the two sets of data regarding case management actions as seen in Table VIII. The general respondents were much more likely than the attorneys to believe the court held pre-trial actions to a firm schedule, ruled promptly on pre-trial motions, set an early and firm trial date, exerted firm control over the trial and limited the scope of discovery.

The attorneys were much more likely to believe the court narrowed issues through conferences than were the general respondents.

TABLE VIII

Case Management Actions Taken by Court

Action	Att	Gen
Hold Pre Trial schedule to firm schedule	62	89
Set early & firm trial date	51	67
Rule promptly on pre trial motions	51	89
Initial conference by judge/magistrate	48	44
Facilitate settlement	46	44
Set & enforce limits on allowable discovery	43	44
Narrow isues through conference	43	11
Initial conference by clerk	39	78
Exert firm control over trial	27	89
Set limits on amount and scope of discovery	25	44
Use ADR	5	0

Delay a Problem?

Ninety percent of the attorney respondents didn't think delay was generally a problem in the Eastern District of Louisiana. Seventy percent of the attorneys stated the time taken to resolve their case was reasonable. Two thirds of the general respondents believed the time required from filing to disposition of cases was reasonable in the Eastern District. Forty seven percent of the litigants thought the time taken to resolve their matter from the filing of the suit to the final disposition in the trial court was about right, however, 45% said it took too long to reach final disposition.

How to Cut Delay

The general respondents believed delay could be reduced by enforcing discovery rules, using summary judgement to narrow issues and to quit ducking trials.

According to attorneys the factors contributing to delays were dilatory actions by counsel, backlog of other cases, inadequate case management by the judge, excessive discovery, dilatory actions by litigants, and the courts failure to rule promptly.

The litigants wanted limits set on discovery and those limits enforced, ADR used more, an early and firm trial date set, settlement discussion facilitated by the court, and pre trial activities held to a firm schedule.

Money at Stake

Approximately a fourth of both the attorneys and litigants cases involved less than $50,000 being at stake. About half the cases of both groups involved more than $100,000 while around a fifth of both groups had $1,000,000 or more at stake.

Fee Arrangement

Seventy eight percent of the general respondents, 77% of the litigants, and 67% of the attorneys had an hourly fee arrangement with their client. The overwhelming fee arrangement was hourly fee with all three groups.

Hours Spent by Attorneys on a Case

A third of the general respondents indicated they spent an average of 250 to 500 hours on a case while another 22% spent 100

to 250 hours on a case for a total of 55% spending between 100 and 500 hours.

A fourth of the attorneys spent less than 40 hours on the particular case they were asked about and 42% of the attorneys spent less than 100 hours on their case.

Eleven percent of the general respondents and 12% of the attorneys put in more than 500 hours.

Fees Too High?

Fifty six percent of the general respondents believe fees incurred to litigate in the Eastern District were generally about right. Fifty nine percent of the attorney respondents indicated the fees incurred by them on their cases were about right while 61% of the litigants stated their costs were about right.

A third of the general respondents said legal fees were too high in the district compared to 21% of the attorneys and 39% of the litigants.

Reasons for High Costs

The most frequently given reason for high costs by the general respondents and the attorneys were actions by counsel or parties followed by excessive discovery.

Litigants, when asked what actions should have been taken to lower costs, mentioned setting and enforcing limits on allowable discovery.

Total Cost of Litigation

Forty four percent of the general respondents, and a third of the attorneys reported half or more of the total cost of their

litigation was discovery. Among the attorney respondents, only 6% had trial costs reaching 30% or more of the total litigation costs.

One third of the general respondents indicated trial costs took up 30% or more of litigation costs.

Arbitration

Nearly 90% of the general respondents and litigants said the court had not encouraged any form of ADR being used.

Concerned About the Future

Seventeen percent of the attorney respondents said their clients dominant concern was about the possible future consequences of the decision compared to one of the general respondents having that as a dominant concern.

Summary of Findings

In general, the Eastern District Court of Louisiana is in very good shape according to the respondents. The amount of time it takes from filing to disposition of cases is reasonable. Case management received high marks from the respondents, and litigation costs were viewed as being about right. Discovery accounted for the largest amount of time and money spent on litigation.

To the extent there were problems with time, case management, or costs, discovery was the culprit. To change the system, the rules of discovery must also be changed.

CIVIL JUSTICE REFORM ACT ADVISORY GROUP FOR THE EASTERN DISTRICT OF LOUISIANA

MEMORANDUM

September 10, 1992

TO: ALL ADVISORY GROUP MEMBERS

FROM: JAY WILKINSON

Re: Summary of Case Sample Docket Review Findings and Conclusions

This memorandum will serve as my compilation of information based upon the review by various Advisory Group members of docket sheets from our 156-case sample of recently terminated cases.

I. SUMMARY CONCLUSIONS

The docket sheets indicated that the Court generally adhered to a standardized, usually effective system of case management procedures, which ordinarily resulted in setting of an initial trial date within about one year of filing of the complaint.

In two-thirds of the cases reviewed, a Rule 16 scheduling preliminary conference was conducted shortly after all answers were filed. In the great majority of those cases in which no scheduling conference was conducted, the reason was that the case was quickly dismissed, transferred, stayed, or closed for other reasons, and no scheduling order was therefore necessary. In only two cases was failure to issue a prompt Rule 16 scheduling order attributed to Court inaction. In more than two-thirds of the cases in which a scheduling order was entered, the order was issued less than six months from the date of filing of the complaint.

In approximately 40% of the scheduling orders, a trial date was set within six months of entry of the scheduling order. In another 40% of scheduling orders, the trial date was set within nine months of entry of the scheduling order. Those 80% of scheduling orders provided for completion of discovery and final pre-trial conferences within corresponding six-month or nine-month periods. Most initial scheduling orders were not altered in any way, primarily because the cases were settled or otherwise disposed of within the initially established schedule. Of those cases in which revised scheduling orders were entered, the usual reason was the granting of the parties' motion to continue the trial due to

the need to conduct additional discovery or add new parties. Continuances at the Court's own instance accounted for only eight such revisions to initial scheduling orders.

Of the docket sheets reviewed, only about one-fourth showed extensive discovery activity, which I have arbitrarily defined as seven or more noticed depositions and/or three or more discovery motions, discovery orders, or discovery-related court appearances.

Although it did not appear to be a serious problem, some delay in ruling on motions occurred. About one-half of the docket sheets reviewed showed significant substantive motion activity. Of those cases, nine had at least one motion which took longer than 90 days from the filing date to decide, and nine others had at least one motion which required between 60 and 90 days from the date of filing to decide.

Some delay in the total time to resolve cases was judged by the docket sheet reviewers to have occurred in 29% of the cases reviewed. Only 14 of the cases reviewed were judged to have taken much too long to resolve. An additional 24 were judged to have taken slightly too long to resolve. The most frequent reasons given for cases taking too long or slightly too long were frequent continuances, the lack of a firm schedule or discovery control imposed by the Court, extensive discovery, and delays in ruling on motions under advisement. Ninety-one of the cases reviewed -- about 71% of the total -- were judged "about right" or satisfactorily short in the time required to resolve them.

II. METHODOLOGY

At my request, the Research Division of the Federal Judicial Center selected for us a representative sample of 156 recently terminated cases from the district. The following types and numbers of cases were included in the sample:

Contracts or Written Instruments		45
Marine Contract	12	
Insurance Contract	6	
Other Contract	15	
Negotiable Instrument	9	
Foreclosure	3	

Torts		72
Marine Personal Injury	36	
Products Liability	6	
Motor Vehicle	6	
Other Tort	24	
Miscellaneous Statutory Actions		39
Civil Rights/Jobs	3	
Other Civil Rights	6	
Labor	6	
Potentially Complex	9	
All Other	15	

Asbestos cases and prisoners' petitions (both habeas corpus and civil rights claims) were excluded from the sample because they already are subject to special procedures and handling by the magistrate judges in the district. To insure for our study purposes that the sample included a sufficient number of cases that required significant amounts of time to resolve, one-third of the cases were chosen from the oldest 25% in each type, one-third were from cases in the 50th to 75th percentile range, and one-third were among the most quickly resolved 50% of cases in each type. Thus, our sample was weighted slightly in favor of cases that took longer to resolve than the mean.

Eight members of the Advisory Group were then provided with varying numbers of docket sheets from each of the 156 cases to review and evaluate. Each member's findings were recorded on a standardized form of report, a sample of which is attached hereto as Exhibit A.

To date, I have received 129 completed docket sheet review forms.[1/] I have cumulated results in the following fashion:

[1/]Bill Gambel has not yet completed the eight docket sheets he received for review. Roy Rodney has completed 11 of the 30 docket sheets he was provided, leaving 19 as yet uncompleted.

III. RESULTS OF DOCKET SHEET REVIEW

(A) How Was the Case Disposed of?

Settlement	78 (61%)
Trial	12 (9%)
Summary Judgment	6 (5%)
Motion to Dismiss	4 (3%)
Others	29 (22%)

(Others include:

Stays	5
Parties' Bankruptcy	6
Remand to State Court	5
Statistical Closure	2
Default Judgment	6
Venue Transfers	4
Judgment Enforcing Settlement	1)

(B) Was a Rule 16 Scheduling Order Entered?

Yes	85 (66%)
No	44 (34%)

(C) If No Rule 16 Scheduling Order Was Entered, Why Not?

Quick Settlement	15 (34%)
Quick Dismissal	8 (18%)
Prompt Stay	4 (9%)
Remands	6 (14%)
Default Judgments	6 (14%)
Cases Transferred	3 (7%)
Court Inaction	2 (5%)

(D) For Cases in Which Rule 16 Scheduling Orders Were Entered:

(1) Time Between Filing of Complaint and Entry of Scheduling Order

(a)	Average Time:	6.05 months
(b)	6 months or less	58 cases (68%)
(c)	7-9 months	14 cases (16%)
(d)	10-12 months	10 cases (12%)

(e) year or more 3 cases (4%)

(2) Time Allowed in Initial Scheduling Order From Date of Scheduling Order to Trial:[2/]

(a) Average Time: 7.86 months

(b) 6 months or less 37 cases (47%)

(c) 7-9 months 33 cases (42%)

(d) 10-12 months 7 cases (9%)

(e) year or more 1 case (2%)

(3) Time Allowed in Initial Scheduling Order From Date of Scheduling Order to Completion of Discovery/Final Pre-trial Conference:[3/]

(a) Average Time: 7.36 months

(b) 6 months or less 46 cases (59%)

(c) 7-9 months 24 cases (31%)

(d) 10-12 months 7 cases (9%)

(e) year or more 1 case (1%)

(E) Were Initial Scheduling Orders Revised?

Yes 37 (44%)
No 48 (56%)

[2/]Seven of the docket sheet reports by Roy Rodney showed scheduling orders entered but recorded no figures for time allowed by the scheduling order to trial, discovery deadline, or final pre-trial conference. Therefore, we have data for only 78 of the 85 cases in this category.

[3/]Same as footnote 2.

(1) If Initial Scheduling Order Was Revised, Why?

(a)	Parties' Motion to Continue, Including to Conduct Discovery or Add New Parties	29 (78%)
(b)	Court's Own Continuance	8 (22%)

(2) If Initial Scheduling Order Was Not Revised, Why Not?

(a)	Unnecessary Because Case Resolved Within Initial Schedule	41 (85%)
(b)	Stay or Remand	3 (7%)
(c)	Parties' Motion to Extend or Continue Denied	4 (8%)

(F) Cases With Extensive Discovery:[4/]

Yes	36 (28%)
No	93 (72%)

(G) Motion Practice:

(1)	Cases With No Substantive Motions	67 (52%)	
(2)	Cases With Substantive Motion(s)	62 (48%)	
(a)	Cases With Substantive Motion(s) in Which All Ruling(s) on Motions Were Issued in 30 Days or Less From Date of Filing Motion		31 (50%)
(b)	Cases With Substantive Motion(s) in Which Ruling(s) on One or More Motion(s) Issued 30-60 Days from Date of Filing Motion		13 (21%)

[4/]I arbitrarily defined "cases with extensive discovery" as those with seven or more noticed depositions and/or three or more discovery-related motions, court orders, or court appearances. My review of all the reports indicated that these were the cases in which the docket sheet reviewers generally concluded that discovery had caused some degree of delay in the case.

(c) Cases With Substantive Motion(s) in Which Ruling(s) on One or More Motion(s) Issued 60-90 Days from Date of Filing Motion — 9 (14.5%)

(d) Cases With Substantive Motion(s) in Which Ruling(s) on One or More Motion(s) Issued 90 Days or More from Date of Filing Motion[5/] — 9 (14.5%)

(H) Time to Resolve the Case:

Much Too Long	14 (11%)
Slightly Too Long	24 (18%)
About Right	83 (64%)
Short	8 (7%)

(1) Reasons 38 Cases Took Much Too Long or Slightly Too Long to Resolve

(a) Frequent Continuances, Including for Extensive Discovery — 17 (45%)

(b) Delay in Motion Rulings — 8 (21%)

(c) Delay by Parties in Service or Replacing Counsel — 6 (17%)

(d) Court Delay in Issuing Scheduling Orders — 7 (17%)

[5/]Internal Court procedures require the judges to report all matters under advisement for decision more than 60 days. Although our figures on time required for motion rulings are geared to the date on which motions were filed rather than the date on which they were taken under advisement, the 60-day standard may be a useful guideline for defining delay in motion rulings. In addition, it should be noted that the docket sheet review reports indicate no particular problem with any particular judge in terms of delay in motion rulings. The 18 cases in which at least one motion required more than 60 days from date of filing to decision were spread among 12 judges.

APPENDIX K

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA

PROPOSED
CIVIL JUSTICE EXPENSE AND DELAY
REDUCTION PLAN
SUBMITTED BY
THE CJRA ADVISORY GROUP (E.D.LA.)

ADOPTED _____, 1993

EFFECTIVE DECEMBER 1, 1993

DRAFT - ADVISORY GROUP PROPOSAL ONLY

TABLE OF CONTENTS

INTRODUCTION

Congress has enacted **THE CIVIL JUSTICE REFORM ACT OF 1990**, 28 U.S.C. §471 et seq. ("the CJRA"). The CJRA requires each United States District Court to implement a civil justice expense and delay reduction plan to facilitate deliberate adjudication of civil cases on the merits, monitor discovery, improve litigation management, and ensure just, speedy, and inexpensive resolution of civil disputes.

This Court has appointed an Advisory Group in accordance with 28 U.S.C. §478. After consideration of the Advisory Group's findings and recommendations, the pending and soon to be effective changes to the Federal Rules of Civil Procedure, and after independent consideration, the United States District Court for the Eastern District of Louisiana adopts the following **CIVIL JUSTICE EXPENSE AND DELAY REDUCTION PLAN ("the Plan").**

ARTICLE ONE: DIFFERENTIAL CASE MANAGEMENT

(1) Timing:

Within 10 days after all answers have been filed, one of the judicial officers assigned to the case shall issue an order in the form attached hereto as Appendix A scheduling a Preliminary Conference. Such conference will be scheduled no later than 60 days from the appearance of a defendant.

(2) Officer Presiding:

The Preliminary Conference shall be conducted personally by the District Judge or the Magistrate Judge to whom the case has been allotted. The judicial officer may not assign this duty to the clerk of court, her/his deputies, a law clerk, or any other person.

(3) Scope of Preliminary Conference:

At the Preliminary Conference, the judicial officer shall:

(a) provide an early neutral evaluation of the case, where practical, based on the pleadings then filed and discussion with counsel;

(b) establish requirements and deadlines for disclosure of witness identities, documents and other exhibits, damage computations, and insurance agreements;

(c) establish deadlines for depositions and other discovery;

(d) establish deadlines for filing of motions, amending pleadings, and adding parties;

(e) preliminarily identify predominant issues to be tried;

(f) establish deadlines for exchange of reports of expert witnesses;

(g) determine the efficacy of referring the case to alternative dispute resolution;

(h) determine (i) the feasibility of limiting discovery below the limits established in the Federal Rules of Civil Procedure, the Local Rules or the plan, or (ii) whether due to the complexity of the case those limits might be exceeded;

(i) the possibility of settlement and the need and date for any further settlement conference;

(j) establish final pretrial conference and trial dates, the trial date to be no later than nine months from the date of the Preliminary Conference, unless the judicial officer specifically finds that due to the complexity of the case a longer period is required;

(k) discuss any other matter suggested by Fed. R. Civ. Pro. 16 or appropriate for effective management of the case by the Court.

(4) Assessment of Counsel and Parties:

No later than two (2) work days prior to the Preliminary Conference, counsel for all parties, after consulting with their clients, shall file in the record, serve on opposing counsel, and deliver a copy to the judicial officer presiding over the Preliminary Conference, a short memorandum, which in no event shall exceed two (2) double-spaced pages in length, addressing items (e), (h), (j), and (k) set forth in Paragraph (3) of Article One of the Plan above.

(5) Attendance:

Participants at the Preliminary Conference shall be the Trial Attorney designated pursuant to Local Rule 1.04 or any counsel of record on pleadings already filed with full authority to make decisions and agreements that bind the client, unless

permission for attendance by other counsel is obtained from the Court in advance.

(6) Scheduling and Management Order:

Following the Preliminary Conference, the presiding judicial officer shall issue an order establishing all disclosure requirements and deadlines, discovery deadlines and limits, if any, and final pretrial conference and trial dates. All sections of the Court shall employ the uniform order attached hereto as Appendix B in this regard.

ARTICLE TWO: DISCLOSURE AND DISCOVERY

(1) Disclosure:

Voluntary disclosure shall be completed as provided in proposed Fed. R. Civ. Pro. 26(a), a copy of which is attached hereto as Appendix C, which the Court specifically endorses and adopts as an effective provision of the Plan in this District.

Disputes between the parties concerning disclosure shall be subject to the same procedures as for discovery disputes set forth in Local Rules 2.11E, 6.04E, and 19.05E(a).

(2) Discovery Limits:

The number of interrogatories shall be limited in accordance with Local Rule 6.01.

The number of requests for admissions shall also be limited in the same fashion and subject to the same provisions applicable to interrogatories in Local Rule 6.01.

Discovery depositions shall be conducted and limited pursuant to proposed Fed. R. Civ. Pro. 30(a)(2) and 30(d), a copy of which is attached hereto as Appendix D, which the Court specifically endorses and adopts as an effective provision of the Plan in this District.

Judicial officers assigned to cases are specifically authorized and encouraged in consultation with counsel in appropriate cases to impose limits on discovery more restrictive than those established above, or if the case is complex to extend such limits.

ARTICLE THREE: MOTION PRACTICE

(1) Motions shall be filed and considered in strict compliance with applicable provisions of Local Rules 2.01 through 2.15E.

(2) Motions for postponement of trial shall be accompanied by the certificate of an attorney of record, signed pursuant to Fed. R. Civ. Pro. 11, certifying that his client has been advised by the signing attorney that the attorney has initiated or consented to a motion to continue the trial and that the client has been provided with a copy of the motion or consent. Any such motion shall be filed in complete compliance with applicable provisions of Local Rules 2.01E through 2.15E.

(3) Motions shall be determined by the presiding judicial officer as soon as practicable, and in any event within 60 days after the later of the hearing date or the date of submission of the final brief for the particular motion. The Court shall employ its best efforts to dispose of motions within this time limit. If for any reason the Court fails to issue a ruling on a motion within the time limit established herein, it shall be the responsibility of the Chief Judge to remind the Court of its obligation to do so in writing to the judicial officer considering the motion.

ARTICLE FOUR: ALTERNATIVE DISPUTE RESOLUTION

If the presiding judicial officer determines at any time that the case will benefit from alternative dispute resolution, the judicial officer shall:

(a) have discretion to refer the case to private mediation, if the parties consent, even if such mediation efforts upset previously set trial or other dates;

(b) have discretion to order nonbinding mini-trial or nonbinding summary jury trial before a judicial officer with or without the parties' consent; or

(c) employ other alternative dispute resolution programs which may be designated for use in this District.

ARTICLE FIVE: MISCELLANEOUS

(1) Final Pretrial Conference and Pretrial Order:

Pretrial orders shall be prepared for each case in the form and according to a uniform form of Pretrial Notice and Instructions, a copy of which is attached as Appendix E, to be used by all sections of the Court and provided to counsel as an attachment to the order described in Article One above issued following the Preliminary Conference.

The District Judge who will preside over the trial (or the presiding Magistrate Judge for cases that will be tried to a Magistrate Judge) shall personally preside over all final pretrial conferences. This duty may not be delegated to a law clerk, secretary, clerk of court, her/his deputies, or other non-judicial officer.

(2) Docket Calls:

Once per month, in strict compliance with Local Rule 11.01E, each section of Court shall conduct a call docket for all cases in which timely answers have not been filed. Except under extraordinary circumstances demonstrated at the call docket, all such cases shall be dismissed pursuant to FRCP4(j) or Local Rule 11.01E, whichever may be applicable, unless a motion for default is filed prior to the date of the scheduled call docket.

(3) Settlement Conferences:

In its order following the Preliminary Conference described in Article One above, the Court shall state that a conference will be scheduled at the request of any party exclusively for the purpose of discussing settlement.

The presiding judge with responsibility for trying the case shall preside over any settlement conference requested by any party or make arrangements for it to be conducted by another District Judge, Senior Judge, or Magistrate Judge.

Participants at any settlement conference must include counsel of record with authority to bind settlement. The Court may, in appropriate cases, specifically require attendance at a settlement conference by the parties to the suit or by representatives of the parties with authority to bind settlement.

(4) Telephone Attendance:

All conferences of any kind required by the Plan, Local Rules, or pretrial notices of this Court (except the preliminary conference described in Article One above and the final pretrial conference) and all hearings on nondispositive motions (except those at which live evidence will be presented) may be attended by telephone, unless otherwise specifically ordered by the Court.

(5) Trial Settings:

All sections of the Court shall set more than one case for trial on any given trial date or on any day during any particular trial week.

When the demands of a judicial officer's criminal docket, or the unanticipated length of a civil trial, or some other

emergency or unanticipated situation prevents the Court from adhering to a trial date, counsel shall be advised as soon as practicable after the impediment appears. The judicial officer shall:

(1) Determine what other judicial officer, if any, of the District would be available to preside over the trial on the date scheduled;

(2) Convene a telephone conference for the purpose of advising counsel of the situation;

(3) Advise counsel of the availability of any other judicial officer of the District to preside over trial on the date originally established; and

(4) Determine whether unanimous consent exists among counsel and the parties regarding reassignment of the case to another specifically identified judicial officer of the District for trial on the date scheduled. Where unanimous consent on reassignment exists, the assigned judicial officer shall effect reassignment of the case to the judicial officer identified by counsel and the parties.

(5) If no other judicial officer of the District is available with unanimous consent of counsel and the parties to preside over trial on the date originally established, the case shall be identified in writing internally as a "priority trial status" case -- by the presiding judicial officer with a copy of such written identification to the Chief Judge -- and every effort shall subsequently be made to schedule a first setting new trial date, within three months if possible, on which date all counsel expect to be available without undue hardship or expense to the litigants.

(6) Non-Jury Trial Decisions:

Decisions in non-jury cases shall be determined by the presiding judicial officer as soon as practicable, and in any event within 60 days after the later of the close of evidence or submission of the final post-trial brief. The Court shall employ its best effort to enter such decisions within this time limit. If for any reason the Court fails to issue its ruling within the time limit established herein, it shall be the responsibility of the Chief Judge to remind the Court of its obligation to do so in writing to the judicial officer who presided over the non-jury trial.

(7) Study Groups:

On or about the effective date of the Plan, the Chief Judge shall appoint two CJRA Study Groups as follows:

(a) To examine whether a formal "tracking" procedure of identifying cases by their complexity and imposing predetermined discovery or scheduling limits according to the designated track should be instituted in the District.

(b) To examine whether, and if so how, a court-annexed program should be established in the District for alternative dispute resolution.

Each Study Group shall prepare and submit to the full Advisory Group and the Chief Judge of the District Court a written report containing its findings and recommendations no later than December 31, 1994.

(8) Conflict with Other Rules:

In the event the rules or procedures in the Plan conflict with other Local Rules or procedures of this Court, this Plan shall prevail.

(9) Plan Modification:

The Plan may be modified by the Court at any time after consultation with the Advisory Group.

(10) Effective Date:

The Plan shall be effective and applicable to all civil cases filed on or after December 1, 1993.

SO ORDERED this _____ day of _____, 1993, at New Orleans, Louisiana.

MOREY L. SEAR
CHIEF JUDGE
UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

EXPENSE AND DELAY REDUCTION PLAN

APPENDIX A

MINUTE ENTRY
JUDGE _____
DATE _____

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

_____	*	CIVIL ACTION
VERSUS	*	NO. _____
_____	*	SECTION _____ (_____)

A preliminary conference for all purposes set forth in Article One of this Court's Civil Justice Expense and Delay Reduction Plan ("the Plan") is hereby set before the Honorable _____, at _____ o'clock ____.M., on the _____ day of _____, 199____,

Counsel are instructed to consult Article One of the Plan, submit the memorandum required by it, and be prepared accordingly.

This conference must be attended in person.

New Orleans, Louisiana, this _____ day of _____, 199____.

_____
UNITED STATES _____ JUDGE

EXPENSE AND DELAY REDUCTION PLAN

APPENDIX B

MINUTE ENTRY
JUDGE _____
DATE _____

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

_____	*	CIVIL ACTION
VERSUS	*	NO. _____
_____	*	SECTION _____ (_____)

A Preliminary Conference conducted pursuant to this Court's Civil Justice Expense and Delay Reduction Plan ("the Plan") was held this date. Participating were:

Pleadings have _____ been completed. Jurisdiction and venue are established.

All pretrial motions shall be filed and served in sufficient time to permit hearing thereon no later than 30 days prior to trial date. Any motions filed for hearing in violation of this order shall be deemed waived unless good cause is shown.

Counsel shall complete all disclosure of information required by proposed Federal Rule of Civil Procedure 26(a) as amended _____, 1993, a copy of which appears in the Plan.

Discovery depositions shall be conducted and limited pursuant to proposed Federal Rule of Civil Procedure 30(a)(2) and 30(d), as amended _____, 1993, a copy of which appears in the Plan. Depositions for trial use shall be taken and all discovery shall be completed not later than 30 days prior to Final Pretrial Conference Date.

Amendments to pleadings, third-party actions, cross-claims, and counterclaims shall be filed no later than _____.

Counsel adding new parties subsequent to mailing of this Notice shall serve on each new party a copy of this Minute Entry. Pleadings responsive thereto, when required, shall be filed within the applicable delays therefor.

Written reports of experts who may be witnesses for Plaintiffs fully setting forth all matters about which they will testify and the basis therefor shall be obtained and delivered to counsel for Defendant as soon as possible, but in no event later than 90 days prior to Final Pretrial Conference Date.

Written reports of experts who may be witnesses for Defendants fully setting forth all matters about which they will testify and the basis therefor shall be obtained and delivered to counsel for Plaintiff as soon as possible, but in no event later than 60 days prior to Final Pretrial Conference Date.

Counsel for the parties shall file in the record and serve upon their opponents a list of all witnesses who may or will be called to testify at trial and all exhibits which may or will be

used at trial not later than 60 days prior to Final Pretrial Conference Date.

The Court will not permit any witness, expert or fact, to testify or any exhibits to be used unless there has been compliance with this Order as it pertains to the witness and/or exhibits, without an order to do so issued on motion for good cause shown.

Settlement possibilities were discussed. A further settlement conference will be scheduled at any time at the request of any single party to this action.

This case does/does not involve extensive documentary evidence, depositions or other discovery. [No] [S]pecial discovery limitations beyond those established in the Federal Rules, Local Rules of this Court, or the Plan are established [as follows:]

A Final Pretrial Conference will be held before the judicial officer who will preside at trial on _____ at _____. Counsel will be prepared in accordance with the final Pretrial Notice attached.

Trial will commence on _____, 199__ (or at any time during that week) at _____ A.M. before the District Judge with/without a jury. Attorneys are instructed to report for trial not later than 30 minutes prior to this time. The starting time on the first day of a jury trial may be delayed or moved up one hour because of jury pooling. Trial is estimated to last _____ day(s).

Deadlines, cut-off dates, or other limits fixed herein may only be extended by the Court upon timely motion filed in compliance with the Plan and Local Rules and upon a showing of good cause.

UNITED STATES _____ JUDGE

aragraph (9) is revised to enhance the court's powers in utilizing a variety proced to facilitate settlement, such as through mini-trials, mediation, and nonbi g arbitratio The revision of paragraph (9) should be read in conjunction with th ision later added the subdivision, authorizing the court to direct that the par or their representatives insurers attend a settlement conference or partici in special proceedings desig to foster settlement. Cf. G. Heileman Brewing C Oat Mfg. Co., 871 F.2d 1016 (7th C 989); Strandell v. Jackson County, 838 F.2d (7th Cir. 1987).

Parties should not be ed by the court into settlement and the lack of interest of a party to participate in settle t discussions may be a si that the time and expense involved in pursuing settlement i be unproductive. N theless, the court should have the power in appropriate cases to ire parties to ticipate in proceedings that may indicate to them--or their adversaries-- isdom resolving the litigation without resort to a full trial on the merits. Of course th hould not impose unreasonable burdens on a party as a device to extract settlem uch as by requiring officials with broad responsibilities to attend a settlement c ren volving relatively minor matters.

New paragraphs (13) and (are added to c ttention to the opportunities for structuring of trial under Rule and under revised Ru 50 and 52.

Paragraph (15) is new. It supplements the power o court to limit the extent of evidence under R 403 and 611(a) of the Federal Rules of lence, which typically would be invoked result of developments during trial. Limits on extent of evidence established at nference in advance of trial provide the parties with a ter opportunity to determi orities and exercise selectivity in presenting evidence tha n limits are imposed ing trial. Any such limits must be reasonable under the circu ces, and ordi the court should impose them only after receiving appropriate submis s from th rties outlining the nature of the testimony expected to be presented through ious nesses and exhibits, and the expected duration of direct and cross-examination.

APPENDIX C

Rule 26. General Provisions Governing Discovery; Duty of Disclosure

(a) Required Disclosures; ~~Discovery~~ Methods to Discover Additional Matter.

(1) Initial Disclosures. Except in actions exempted by local rule or when otherwise ordered, each party shall, without awaiting a discovery request, provide to every other party:

(A) the name and, if known, the address and telephone number of each individual likely to have information that bears significantly on any

claim or defense, identifying the subjects of the information;

(B) a copy of, or a description by category and location of, all documents, data compilations, and tangible things in the possession, custody, or control of the party that are likely to bear significantly on any claim or defense;

(C) a computation of any category of damages claimed by the disclosing party, making available for inspection and copying as under Rule 34 the documents or other evidentiary material on which such computation is based, including materials bearing on the nature and extent of injuries suffered; and

(D) for inspection and copying as under Rule 34 any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment.

Unless the court otherwise directs or the parties otherwise stipulate with the court's approval, these disclosures shall be made (i) by a plaintiff within 30 days after service of an answer to its complaint; (ii) by a defendant within 30 days after serving its answer to the complaint; and, in any event, (iii) by any party that has appeared in the case within 30 days after receiving from another party a written demand for accelerated disclosure accompanied by the demanding party's disclosures. A party is not excused from disclosure because it has not fully completed its investigation of the case, or because it challenges the sufficiency

of another party's disclosures, or, except with respect to the obligations under clause (iii), because another party has not made its disclosures.

(2) Disclosure of Expert Testimony.

(A) In addition to the disclosures required in paragraph (1), each party shall disclose to every other party any evidence that the party may present at trial under Rules 702, 703, or 705 of the Federal Rules of Evidence. This disclosure shall be in the form of a written report prepared and signed by the witness which includes a complete statement of all opinions to be expressed and the basis and reasons therefor; the data or other information relied upon in forming such opinions; any exhibits to be used as a summary of or support for such opinions; the qualifications of the witness; and a listing of any other cases in which the witness has testified as an expert at trial or in deposition within the preceding four years.

(B) Unless the court designates a different time, the disclosure shall be made at least 90 days before the date the case has been directed to be ready for trial, or, if the evidence is intended solely to contradict or rebut evidence on the same subject matter identified by another party under paragraph (2)(A), within 30 days after the disclosure made by such other party. These disclosures are subject to the duty of supplementation under subdivision (e)(1).

(C) By local rule or by order in the case, the court may alter the type or form of disclosures to be made with respect to particular experts or categories of experts, such as treating physicians.

(3) Pretrial Disclosures. In addition to the disclosures required in the preceding paragraphs, each party shall provide to every other party the following information regarding the evidence that the disclosing party may present at trial other than solely for impeachment purposes:

(A) the name and, if not previously provided, the address and telephone number of each witness, separately identifying those whom the party expects to present and those whom the party may call if the need arises;

(B) the designation of those witnesses whose testimony is expected to be presented by means of a deposition and, if not taken by stenographic means, a transcript of the pertinent portions of such deposition testimony; and

(C) an appropriate identification of each document or other exhibit, including summaries of other evidence, separately identifying those which the party expects to offer and those which the party may offer if the need arises.

Unless otherwise directed by the court, these disclosures shall be made at least 30 days before trial. Within 14 days thereafter, unless a different time is specified by the court, other parties shall serve and file (i) any objections that deposition testimony designated under subparagraph (B) cannot be used under Rule 32(a) and (ii) any objection to the admissibility of the materials identified under subparagraph (C). Objections not so made, other than under Rules 402-03 of the Federal Rules of Evidence, shall be deemed waived unless excused by the

Rule 30

(1) ~~After commencement of the action,~~ any party may take the testimony of any person, including a party, by deposition upon oral examination without leave of court except as provided in paragraph (2). ~~Leave of court, granted with or without notice, must be obtained only if the plaintiff seeks to take a deposition prior to the expiration of 30 days after service of the summons and complaint upon any defendant or service made under Rule 4(e), except that leave is not required (1) if a defendant has served a notice of taking deposition or otherwise sought discovery, or (2) if special notice is given as provided in subdivision (b)(2) of this rule.~~ The attendance of witnesses may be compelled by subpoena as provided in Rule 45. ~~The deposition of a person confined in prison may be taken only by leave of court on such terms as the court prescribes.~~

(2) Leave of court, which shall be granted to the extent consistent with the principles stated in Rule 26(b)(2), must be obtained if the person to be examined is confined in prison or if, without the written stipulation of the parties,

(A) a proposed deposition, if taken, would result in more than ten depositions being taken under this rule or Rule 31 by the plaintiffs, or by the defendants, or by third-party defendants;

(B) the person to be examined already has been deposed in the case; or

(C) a party seeks to take a deposition before the time specified in Rule 26(d) unless the notice contains a certification, with supporting facts, that the person to be examined is expected to leave the United States and

APPENDIX O

be unavailable for examination within the United States unless the person's deposition is taken before expiration of such period.

(b) Notice of Examination: General Requirements; ~~Special Notice; Non-Stenographic~~ Means of Recording; Production of Documents and Things; Deposition of Organization; Deposition by Telephone.

(1) A party desiring to take the deposition of any person upon oral examination shall give reasonable notice in writing to every other party to the action. The notice shall state the time and place for taking the deposition and the name and address of each person to be examined, if known, and, if the name is not known, a general description sufficient to identify the person or the particular class or group to which the person belongs. If a subpoena duces tecum is to be served on the person to be examined, the designation of the materials to be produced as set forth in the subpoena shall be attached to or included in the notice.

(2) ~~Leave of court is not required for the taking of a deposition by the plaintiff if the notice (A) states that the person to be examined is about to go out of the district where the action is pending and more than 100 miles from the place of trial, or is about to go out of the United States, or is bound on a voyage to sea, and will be unavailable for examination unless the person's deposition is taken before expiration of the 30 day period, and (B) sets forth facts to support the statement. The plaintiff's attorney shall sign the notice, and the attorney's signature constitutes a certification by the attorney that to the best of the attorney's knowledge, information, and belief the statement and supporting facts~~

district and at the place where the deponent is to answer questions propounded to the deponent.

(c) **Examination and Cross-Examination; Record of Examination; Oath; Objections.** Examination and cross-examination of witnesses may proceed as permitted at the trial under the provisions of the Federal Rules of Evidence, exclusive of Rule 615 thereof. The officer before whom the deposition is to be taken shall put the witness on oath and shall personally, or by someone acting under the officer's direction and in the officer's presence, record the testimony of the witness. The testimony shall be taken stenographically or recorded by any other means ~~ordered in accordance with~~ authorized by subdivision (b)(42) of this rule. ~~If requested by one of the parties the testimony shall be transcribed.~~ All objections made at the time of the examination to the qualifications of the officer taking the deposition, or to the manner of taking it, or to the evidence presented, or to the conduct of any party, and any other objection to the proceedings, shall be noted by the officer upon the record of the deposition. Evidence objected to shall be taken subject to the objections. In lieu of participating in the oral examination, parties may serve written questions in a sealed envelope on the party taking the deposition and the party taking the deposition shall transmit them to the officer, who shall propound them to the witness and record the answers verbatim.

(d) **Schedule and Duration; Motion to Terminate or Limit Examination.**

(1) Unless otherwise authorized by the court or agreed to by the parties, actual examination of the deponent on the record shall be limited to six hours. Additional time shall be allowed by the court if needed for a fair examination

of the deponent and consistent with the principles stated in Rule 26(b)(2), or if the deponent or another party has impeded or delayed the examination. If the court finds such an impediment, delay, or other conduct that frustrates the fair examination of the deponent, it may impose upon the person responsible therefor an appropriate sanction, including the reasonable costs and attorney' fees incurred by any parties as a result thereof.

(2) At any time during the taking of the deposition, on motion of a party or of the deponent and upon a showing that the examination is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass, or oppress the deponent or party, the court in which the action is pending or the court in the district where the deposition is being taken may order the officer conducting the examination to cease forthwith from taking the deposition, or may limit the scope and manner of the taking of the deposition as provided in Rule 26(c). If the order made terminates the examination, it shall be resumed thereafter only upon the order of the court in which the action is pending. Upon demand of the objecting party or deponent, the taking of the deposition shall be suspended for the time necessary to make a motion for an order. The provisions of Rule 37(a)(4) apply to the award of expenses incurred in relation to the motion.

(e) ~~Submission to~~ Review by Witness; Changes; Signing. ~~When the testimon is fully transcribed, the deposition shall be submitted to the witness for examinatio and shall be read to or by the witness, unless such examination and reading are waive by the witness and by the parties. Any changes in form or substance which the witne desires to make shall be entered upon the deposition by the officer with a statemer~~

APPENDIX E

THIS PRE-TRIAL NOTICE CONTAINS NEW MATERIAL.
REVISED MAY, 1989

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

PRE-TRIAL NOTICE

IT IS ORDERED that a pre-trial conference will be held in chambers before Judge , Section , in the cases shown on the attached list on the dates and the times there indicated.

The purpose of the pre-trial conference is to secure a just and speedy determination of the issues. If the type of pre-trial order set forth below does not appear calculated to achieve these ends in this case, please arrange a conference with the Judge and opposing counsel immediately so that alternative possibilities may be discussed.

The procedure necessary for the preparation of the formal pre-trial order that will be reviewed and entered at this conference is as follows:

I.

The pre-trial order, in duplicate, must be delivered to the Court's chambers by 4:30 p.m. on a day that allows one full work day prior to the conference, excluding Saturdays, Sundays and holidays (i.e., if the conference is set for 10:00 a.m. Friday, it must be delivered by 4:30 p.m. Wednesday. If the conference is set on Monday, the pre-trial order will be delivered to the Judge on Thursday by 4:30 p.m.).

II.

Counsel for all parties shall confer **in person (face to face)** by telephone at their earliest convenience for the purpose of arriving at all possible stipulations and for the exchange of copies of documents that will be offered in evidence at the trial. It shall be the duty of counsel for plaintiff to initiate this conference, and the duty of other counsel to respond. If, after reasonable effort, any party cannot obtain the cooperation of other counsel, it shall be his duty to communicate immediately with the Court. The conference of counsel shall be held at least ten days prior to the date of the scheduled pre-trial conference in order that counsel for all parties can furnish each other with a statement of the real issues each party will offer evidence to support, eliminating any issues that might appear in the plead-

THIS PRE-TRIAL NOTICE CONTAINS NEW MATERIAL.
REVISED MAY, 1989

ings about which there is no real controversy, and including in such statement issues of law as well as ultimate issues of fact from the standpoint of each party. Counsel for plaintiff then will prepare a pre-trial order and submit it to opposing counsel, after which all counsel jointly will submit the original and one copy of the final draft of the proposed pre-trial order to the Judge.

III.

At their meeting, counsel **must** consider the following:

A. **Jurisdiction.** Since jurisdiction may not ever be conferred by consent and since prescription or statutes of limitations may bar a new action if the case or any ancillary demand is dismissed for lack of jurisdiction, counsel should make reasonable effort to ascertain that the Court has jurisdiction.

B. **Parties.** Correctness of identity of legal entities; necessity for appointment of tutor, guardian, administrator, executor, etc., and validity of appointment if already made; correctness of designation of party as partnership, corporation or individual d/b/a trade name.

C. **Joinder.** Questions of misjoinder or nonjoinder of parties.

IV.

At the pre-trial conference counsel must be fully authorized and prepared to discuss settlement possibilities with the Court. Counsel are urged to discuss the possibility of settlement with each other thoroughly before undertaking the extensive labor of preparing the proposed pre-trial order. Save your time, the Court's time, and the client's time and money.

V.

The pre-trial conference **must** be attended by the attorneys who will try the case, unless prior to the conference the Court grants permission for other counsel to attend. These attorneys will familiarize themselves with the pre-trial rules, and will come to the conference with full authority to accomplish the purposes of Rule 16 of the Federal Rules of Civil Procedure.

VI.

Pre-trial conferences will not be continued except for good cause shown in a **written** motion presented sufficiently in advance of the conference for opposing counsel to be notified.

VII.

Failure on the part of counsel to appear at the conference may result in **sanctions**, including but not limited to sua sponte dismissal of the suit, assessment of costs and attorney fees, default or other appropriate sanctions.

VIII.

All pending motions and all special issues or defenses raised in the pleadings must be called to the court's attention in the pre-trial order.

IX.

The pre-trial order shall bear the signatures of all counsel at the time it is submitted to the Court; the pre-trial order shall contain an appropriate signature space for the Judge. Following the pre-trial conference, the signed copy of the order shall be filed into the record, and the additional copy shall be retained in the Judge's work file. The order will set forth:

1. The date of the pre-trial conference.

2. The appearance of counsel identifying the party(s) represented.

3. A description of the parties, and in cases of insurance carriers, their insured must be identified. The legal relationships of all parties with reference to the claims, counterclaims, third-party claims and cross claims, etc.

4. a. With respect to jurisdiction, a brief summary of the factual basis supporting each claim asserted, whether original claim, counterclaim or third-party claim, etc., and, the legal and jurisdictional basis for each such claim, or if contested, the jurisdictional questions;

   b. In diversity damage suits, there is authority for dismissing the action, either before or after trial, where it appears that the damages reasonably could not come within the jurisdictional limitation. Therefore, the proposed pre-trial order in such cases shall contain either a stipulation that $50,000 (or for a case commenced before May 18, 1989, $10,000) is involved or a resume of the evidence supporting the claim that such sum reasonably could be awarded.

5. A list and description of any motions pending or contemplated and any special issues appropriate for determination in advance of trial on the merits. If the Court at any prior hearing has indicated that it would decide certain matters at the time of pre-trial, a brief summary of those matters and the position of each party with respect thereto should be included in the pre-trial order.

6. A brief summary of the material facts claimed by:
   a. Plaintiff
   b. Defendant
   c. Other parties.

7. A **single listing** of all uncontested material facts.

8. A **single listing** of the contested issues of fact. (This does not mean that counsel must **concur** in a statement of the issues; it simply means that they must list in a single list all issues of fact.) Where applicable, particularities concerning the following fact issues shall be set forth:

   a. Whenever there is in issue the seaworthiness of a vessel or an alleged unsafe condition of property, the material facts and circumstances relied upon to establish the claimed unseaworthy or unsafe condition shall be specified with particularity;

   b. Whenever there is in issue negligence of the defendant or contributory or comparative negligence of the plaintiff, the material facts and circumstances relied upon to establish the claimed negligence shall be specified with particularity;

   c. Whenever personal injuries are at issue, the nature and extent of the injuries and of any alleged disability shall be specified with particularity;

   d. Whenever the alleged breach of a contractual obligation is in issue, the act or omissions relied upon as constituting the claimed breach shall be specified with particularity;

   e. Whenever the meaning of a contract or other writing is in issue, all facts and circumstances surrounding execution and subsequent to execution, both those admitted and those in issue, which each party contends serve to aid interpretation, shall be specified with particularity;

f. Whenever duress or fraud or mistake is in issue, and set forth in the pleadings, the facts and circumstances relied upon as constituting the claimed duress or fraud or mistake (see Fed. R. Civ. P. 9(b)) shall also be set forth in the pre-trial order;

g. If special damages are sought, they shall be itemized with particularity. (See Fed. R. Civ. P. 9(g));

h. If a conspiracy is charged, the details of facts constituting the conspiracy shall be particularized.

9. A **single listing** of the contested issues of law. (See explanation in 8 above.)

10. For each party, a list and description of exhibits intended to be introduced at the trial. Prior to the confection of the pre-trial order, the parties shall meet, exchange copies of all exhibits, and agree as to their authenticity and relevancy. As to any exhibits to which the parties cannot agree, memoranda shall be submitted on or before **five** working days prior to trial.

a. Each list of exhibits first should describe those that are to be admitted without objection, and then those to which there will be objection, noting by whom the objection is made (if there are multiple adverse parties), and the nature of the objection. Markers identifying each exhibit should be attached to the exhibits at the time they are shown to opposing counsel during preparation of the pre-trial order;

b. If a party considers he has good cause not to disclose exhibits to be used solely for the purpose of impeachment, he may ex parte request a conference with the Court and make his position known to the Court in camera.

c. Where appropriate to preserve trade secrets or privileges, the listing of exhibits may be made subject to a protective order or in such other fashion as the Court may direct. If there are such exhibits, the pre-trial order will state: The parties will discuss exhibits alleged to be privileged (or to contain trade secrets, etc.) at the pre-trial conference.

counsel shall prepare

d. [redacted] In addition to the formal list of exhibits, copies [redacted] for opposing counsel, and a bench book of exhibits [redacted] delivered to the Court five working days before the start of the trial. If the trial is a jury trial and counsel desires to display exhibits to the members of the jury, then sufficient copies of such exhibits must be available so as to provide each juror with a copy, or alternatively, enlarged photographic copies or projected copies should be used. The Clerk of Court has available an opague projector, and arrangements for its use should be made directly with the Clerk.

e. Unless otherwise ordered by the Court, only exhibits included on the exhibit list and/or for which memoranda have been submitted shall be included for use at trial.

f. Each counsel shall submit to the Court on the day of trial a list of exhibits properly marked for identification which he or she desires to use at trial.

11. a. A list of all deposition testimony to be offered into evidence. The parties shall, prior to trial, meet and agree as to the elimination of all irrelevant and repetitive matter and all colloquy between counsel. In addition, the parties shall, in good faith, attempt to resolve all objections to testimony so that the Court will be required to rule only on those objections to which they cannot reach an agreement as to their merit. As to all objections to the testimony which cannot be amicably resolved, the parties shall deliver to the Court, not less than three days prior to trial, a statement identifying the portions objected to, and the ground therefor. Proponents and opponents shall furnish the Court appropriate statements of authorities in support of their positions as to the proposed testimony.

b. In non-jury trials, the parties shall, at least three days prior to trial, submit to the Court:

A summary of what each party intends to prove and convey to the Court by the deposition testimony, including, where appropriate, particular page and line reference to said depositions.

The parties shall indicate to the Court by page and line numbers, those parts of the deposition which each party intends to use, and upon which each party shall rely, in proving their respective cases.

12. a. A list and brief description of any charts, graphs, models, schematic diagrams, and similar objects which, although not to be offered in evidence, respective counsel intend to use in opening statements or closing arguments;

b. Either a stipulation that the parties have no objection to the use of the listed objects for such purpose, or a statement of the objections to their use; and a statement that if other such objects are to be used by any party, they will be submitted to opposing counsel at least three days prior to trial and, if there is then opposition to their use, the dispute will be submitted to the Court at least one day prior to trial.

13. a. A list of witnesses for all parties, including the names, addresses and statement of the general subject matter of their testimony (it is **not** sufficient to designate the witness simply "fact," "medical" or "expert"), and an indication **in good faith** of those who **will** be called in the absence of reasonable notice to opposing counsel to the contrary, and of those who **may** possibly be called;

b. A statement that the witness list was filed in accordance with prior court orders. No other witness shall be allowed unless agreeable to all parties and their addition does not affect the trial date. This restriction will not apply to rebuttal witnesses or documents when necessity cannot be reasonably anticipated. Furthermore, in the case of expert witnesses, counsel shall certify that they have exchanged expert reports in accordance with prior court orders. Expert witnesses whose reports have not been furnished opposing counsel shall not be permitted to testify nor shall experts be permitted to testify to opinions not included in the reports timely furnished;

c. Except for good cause shown, the Court will not permit any witness to testify unless with respect to such witness there has been complete compliance with all provisions of the pre-trial order and prior court orders;

d. Counsel shall not be allowed to ask questions on cross-examination of an economic expert which would require the witness to make mathematical calculations in order to frame a response unless the factual elements of such questions shall have been submitted to that expert witness not less than three full working days before trial.

14. A statement indicating whether the case is a jury or non-jury case.

a. If the case is a jury case, then indicate whether the jury trial is applicable to all aspects of the case or only to certain issues, which issues shall be specified. In jury cases add the following provisions:

"Proposed jury instructions, special jury interrogatories, trial memoranda and any special questions that the Court is asked to put to prospective jurors on voir dire shall be delivered to the Court and opposing counsel not later than five working days prior to the trial date, unless specific leave to the contrary is granted by the Court."

b. In a non-jury case, suggested findings of fact and conclusions of law and a separate trial memorandum, unless the Court enters an order that such is not required. Same are to be submitted not less than five full working days prior to trial.

c. In a jury case, a trial memorandum shall be required only when and to the extent ordered by the Court. However, any party may in any event submit such memoranda not less than five working days prior to trial and should accomplish this with respect to any anticipated evidentiary problems which require briefing and jury instructions requiring explanation beyond mere citation to authority.

15. In cases where damages are sought, include a statement for completion by the Court, that "The issue of liability (will or will not) be tried separately from that of quantum." It is the policy of this Court in appropriate cases to try issues of liability and quantum separately. Accordingly, counsel should be prepared to discuss at the pre-trial conference the feasibility of separating such issues. Counsel likewise should consider the feasibility and desirability of separate trials as to other issues.

16. A statement describing any other matters that might expedite a disposition of the case.

17. A realistic estimate of the number of trial days required. Where counsel cannot agree upon the number of trial days required, the estimate of each side should be given. In addition, the proposed order must contain a sentence including the trial date and time previously assigned.

18. The statement that "This pre-trial order has been formulated after conference at which counsel for the respective parties have appeared in person. Reasonable opportunity has been afforded counsel for corrections, or additions, prior to signing. Hereafter, this order will control the course of the trial and may not be amended except by consent of the parties and the Court, or by order of the Court to prevent manifest injustice."

19. The statement that "Possibility of settlement of this case was considered."

20. The proposed pre-trial order must contain appropriate signature spaces for counsel for all parties and the Judge.

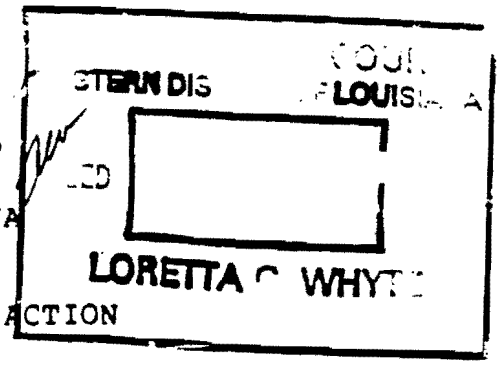
IT IS FURTHER ORDERED that the foregoing pre-trial notice be mailed to counsel of record for all parties to these cases, and counsel will comply with the directions set forth herein.

New Orleans, Louisiana

_____

_____
UNITED STATES DISTRICT JUDGE

EACH NUMBERED PARAGRAPH IS TO BE PRECEDED BY A HEADING DESCRIPTIVE OF ITS CONTENT.



UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

* CIVIL ACTION

VERSUS * NO.

* SECTION

PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

Proposed findings of fact and conclusions of law will be required in this case in accordance with the following instructions.

Plaintiff shall serve and file his proposals not later than 5 p.m. _____. Defendant shall serve and file answering proposals not later than 5 p.m. _____.

Plaintiff's proposals shall include first, a narrative statement of all facts proposed to be proved, and second, concise statement of the plaintiff's legal contentions and the authorities supporting them.

The narrative statement of facts shall set forth in simple, declarative sentences all of the facts relied upon in support of the plaintiff's claim for relief. The narrative statement of facts shall be complete in itself and shall contain no recitation of what any witness testified to, or what any defendant stated or admitted in these or other proceedings, and no reference to the pleadings or other documents or schedules as such. It may contain references in parentheses to the names of witnesses, depositions, pleadings, exhibits or other documents but no party shall be required to admit or deny the accuracy of such references. The narrative statement of facts shall, so far as possible, contain no color words, pejoratives, labels, or legal conclusions. The narrative statement of facts shall be so constructed that each of the opposite parties will be able to admit or deny each separate sentence of the statement. Each separate sentence of the statement shall be separately and consecutively numbered.

In the separate section of the proposals containing the proposed conclusions of law, all legal contentions of each plaintiff, necessary to demonstrate the liability of each defendant to such plaintiff, shall be separately, clearly, and concisely stated in separately numbered paragraphs. Each paragraph shall be followed by citation of authorities that support the proposed conclusion.

Defendant shall file pre-trial proposals containing factual statements admitting or denying each separate sentence contained in the narrative statement of fact of each plaintiff, except when a portion of a sentence is admitted and a portion denied. In those instances, each defendant shall state clearly the portion admitted and the portion denied. Each separate sentence of each defendant's response shall bear the same number as the corresponding sentence in the plaintiff's narrative statement of fact. In a separate portion of each defendant's narrative statement of fact, the defendant shall set forth in a separate narrative statement all affirmative matters of a factual nature relied upon by it. The defendant's narrative statement of affirmative factual matter shall be contained in a narrative statement of facts constructed in the same manner as the plaintiff's narrative statement of facts.

Defendant shall file, in a separate part of its proposals, a statement of its proposed conclusions of law, which shall directly respond to plaintiff's separate legal contentions and contain the contentions of the defendant necessary to demonstrate the non-liability or limited liability of the defendant, or both. The statement of legal contentions of each defendant shall be constructed in the same manner provided for the similar statement of each plaintiff.